SUPREME COURT OF YUKON

Citation: *Ó Murchú v. Yukon (Government of)*, 2020 YKSC 21

Date: 20200604
S.C. No. 19-A0123
Registry: Whitehorse

BETWEEN

TRAOLACH Ó MURCHÚ

PLAINTIFF

AND

GOVERNMENT OF YUKON

DEFENDANT

Before Madam Justice S.M. Duncan

Appearances:
Traolach Ó Murchú — Appearing on his own behalf
Karen Wenckebach — Counsel for the Defendant

REASONS FOR JUDGMENT

INTRODUCTION

[1] This application addresses the nature and rights of probationary employees in a unionized workplace. The defendant employer, Government of Yukon ("YG") seeks to strike the statement of claim brought by the plaintiff, Traolach Ó Murchú, ("Mr. Ó Murchú") after his release from employment during his probationary period. YG says the claim should be struck for no reasonable cause of action because the Court either has no jurisdiction or should not exercise any residual jurisdiction it may have to hear the matter. YG says the legislative scheme and the collective agreement set out the dispute

resolution process for the issues raised in this case. While the court may have some residual jurisdiction, it should not be exercised in these circumstances.

[2] Mr. Ó Murchú says that without the ability to access the court, he has no redress for his complaints about the conduct of his former employer, because there is no form of independent adjudication under the collective agreement or the legislation, and he had no knowledge of the possibility of judicial review.

[3] Alternatively, YG seeks to strike the claim because it may embarrass the fair trial or hearing of the proceeding, recognizing the plaintiff could obtain leave to amend. Mr. Ó Murchú, a self-represented litigant, says he appreciates there may be problems with the claim as drafted and would agree to amend the claim in accordance with the *Rules of Court*.

BACKGROUND

[4] Mr. Ó Murchú was hired by YG as a Communication Analyst at the Department of Environment on February 20, 2017. He was appointed to the position pursuant to the YG's policy on Underfill, meaning that he was not fully qualified for the position and as a result was paid at a lower approved rate of pay, in this case, 80% of the salary. He and YG agreed to an underfill plan document committing YG to provide Mr. Ó Murchú to undertake certain training to help him attain the level of experience required by the position and receive full salary.

[5] Mr. Ó Murchú's original probationary period was for six months pursuant to s. 102 of the *Public Service Act*, R.S.Y. 2002, c. 183 ("*PSA*"). It was extended for an additional six months on July 27, 2017, as permitted by s. 103 of the *PSA*.

[6] On October 19, 2017, during his probationary period, Mr. Ó Murchú was rejected on probation for cause by YG, pursuant to s. 104 of the *PSA*.

[7] On November 9, 2017, Mr. Ó Murchú appealed his release from employment, with the assistance of the Yukon Employees Union ("YEU") to the Deputy Minister of the Department of Environment, based on an internal policy developed by YG. After a hearing and submissions from both parties, the Deputy Minister upheld the decision to release from employment and so advised Mr. Ó Murchú on November 23, 2017.

[8] The YEU representative, David Anderson, on Mr. Ó Murchú's behalf, requested an extension of time for a notice of referral to adjudication, from Stephanie Schorr of the Labour Relations Branch of the Public Service Commission on January 4, 2018, because the YEU were still assessing the merits of a referral. Ms. Schorr responded that she could not agree to an extension of time because s. 78(3) of the *Public Service Labour Relations Act*, R.S.Y. 2002, c. 185, (the "*PSLRA*") does not entitle an employee to refer to adjudication a matter relating to a release from employment during a probationary period.

[9] The YEU then advised Mr. Ó Murchú of their inability to refer the matter to adjudication, saying "[t]he terms and conditions of probationary status are legislated by the [*PSA*] and are not covered under our Collective Agreement with YG." The YEU also referred to the applicability of s. 78(3) of the *PSLRA*.

[10] Mr. Ó Murchú commenced this action on October 18, 2019.

ISSUES

[11] The main question in this application is whether the complaints raised by Mr. Ó Murchú were intended to be fully addressed through the legislative scheme applicable

to employment and labour relations within YG and the collective agreement between YG and the YEU, and whether there are any valid reasons for the court to assume any residual jurisdiction.

[12] The secondary question, in the alternative, is whether the form of statement of claim is so embarrassing it should be struck, with leave to amend.

[13] A preliminary issue is the admissibility of affidavit evidence submitted by the parties.

Preliminary issue of admissibility of affidavit evidence

[14] The basis for YG's application to strike the claim for want of the Court's jurisdiction is Rule 20(26)(a) of the *Rules of Court* – i.e. it discloses no reasonable claim. Rule 20(29) prohibits the admissibility of any evidence on such an application.

[15] This Rule has been interpreted recently by this Court in *Kornelsen v. Yukon*, 2019 YKSC 69, where the issue was also one of striking the claim under Rule 20(26) for want of jurisdiction of the Court to hear a labour and employment dispute of a former YG unionized employee. In that case, referring to the use of affidavit evidence in support of an R 20(26)(a) application where the court's jurisdiction is challenged, Justice Campbell wrote: "affidavit evidence may be admissible if the pleading at issue does not contain factual allegations addressing jurisdiction, or when the factual allegations are not sufficiently particularized to determine the jurisdictional issue" (at para. 33).

[16] The affidavit evidence submitted by YG consists of confirmation of Mr. Ó Murchú's job title and his membership in the bargaining unit and a copy of the collective agreement. It also attaches the bargaining certificate of the Public Service Alliance of

Canada ("PSAC"), of which the YEU is a part, confirming probationary employees are part of the bargaining unit.

[17] The jurisdictional argument is based on the existence of a comprehensive labour relations scheme that addresses Mr. Ó Murchú's employment issues. The existence of the scheme either does not allow for the court to take jurisdiction over the dispute, or it discourages the court from doing so. The YG affidavit evidence provides general information to show that the labour relations scheme applies to Mr. Ó Murchú. He does refer in his statement of claim to the Union, but it is without context relevant to jurisdiction. The pleading does not include all of the facts necessary to decide the jurisdictional argument. The affidavit evidence of YG is admissible.

[18] The evidence in Mr. Ó Murchú's Affidavit #1 does not address the jurisdictional argument. Instead it is evidence to support the allegations on the merits of the claim. The reasonableness of Mr. Ó Murchú's claim on its merits is not at issue in this application. The jurisdictional argument is the only basis for YG's application on the application to strike because of no reasonable claim. The Affidavit #1 evidence is not admissible.

[19] However, the evidence in Affidavit #2 of Mr. Ó Murchú is related to the jurisdictional argument. The affidavit attaches three exhibits:

> 1) excerpt from YG's written submissions on Mr. Ó Murchú's appeal of his release on probation to the Deputy Minister, with reference to the statutory authority in the *PSA*;
>
> 2) email exchange between the YEU representative and the YG labour relations officer about referral to adjudication; and

3) letter from the YEU to Mr. Ó Murchú explaining why his release on probation could not be referred to adjudication.

All of these relate to the effect of the legislated labour relations scheme on Mr. Ó Murchú's employment and are relevant to the jurisdictional argument. The Affidavit #2 with exhibits filed by Mr. Ó Murchú is admissible.

Analysis

I. Are the Issues in this Case Fully Capable of Being Addressed By the Labour Relations Scheme and Collective Agreement?

[20] As YG set out in its outline, in order to determine whether the court has or should assume jurisdiction in this case, there are four questions to be answered:

i. What is the essential nature or character of the dispute between the parties?

ii. Does the dispute fall within the scope of the collective agreement and the applicable legislation?

iii. If it does, does the collective agreement or legislation oust the court's jurisdiction?

iv. If the court's jurisdiction is not ousted, should the court nonetheless exercise its residual jurisdiction?

i) Essential nature or character of dispute

[21] On a review of the statement of claim, I agree with YG that the essence of this dispute is the alleged wrongful termination for cause of Mr. Ó Murchú's employment with YG.

[22] YG notes that Mr. Ó Murchú alleges in his claim he suffered from a lack of training and guidance, delays of contracted pay increases, unfair treatment, workplace

harassment and abuse of authority by his superiors, and an unfair probationary extension. He also alleges his work performance was of high quality at all times. The workplace issues culminated in his allegations of his unjustified release from employment during his probationary period for cause. His claim also alleges that his appeal was an unfair process. The YEU representative on Mr. Ó Murchú's behalf at the appeal raised virtually all of the allegations set out in the claim in support of the unfairness of the release from employment, according to para. 192 of the Statement of Claim. The relief sought by Mr. Ó Murchú includes declarations that his rejection from probation was without cause, and that YG failed to provide adequate notice or payment in lieu of notice of termination, as well as claims for damages for wrongful dismissal, aggravated damages for the infliction of mental distress and loss of reputation, special damages and costs.

[23] Mr. Ó Murchú disagrees that the claim at its essence is about whether he was terminated for cause, because he also seeks damages for breach of contract, harassment, bad faith conduct and unfair dealing in the manner of dismissal and infliction of mental distress. He says these are related to wrongful dismissal and not to the question of cause for termination.

[24] Wrongful dismissal and wrongful termination for cause are in their essence the same dispute. Both are about a former employee's allegations of unfairness or illegality surrounding their loss of employment. They may be adjudicated through different processes (i.e. through the grievance/arbitration process or the court process) but in essence they address the same underlying issues.

[25] The allegations raised by Mr. Ó Murchú in his claim are about the circumstances leading up to his release from employment. Like the situation in *Wood v. Yukon (Highways and Public Works)*, 2017 YKCA 4, these allegations were part of the background leading to an alleged wrongful termination (see para. 22). The allegations may provide evidence of the wrongdoing that Mr. Ó Murchú says led to the wrongful release from employment, but they are not sufficient on their own to remove the dispute from the application legislative scheme and collective agreement and to permit the commencement of a lawsuit for wrongful dismissal.

[26] The relief Mr. Ó Murchú seeks in his claim arises from those same circumstances. The damages sought for breach of contract, harassment, bad faith conduct and unfair dealing in the manner of dismissal and the mental distress are all issues arising from the release of employment.

ii) Does Dispute Fall Within the Scope of the Collective Agreement and the Applicable Legislation?

General Provisions

[27] This dispute is clearly within the scope of the *PSA*, *PSLRA* and the collective agreement between the PSAC, which includes the YEU, and YG.

[28] It is helpful first to understand the nature of the legislative scheme applicable to employees of YG. The *PSA* applies to all YG employees, unionized and non-unionized. It establishes the Public Service Commission; provides for the appointment of deputy heads; creates systems for classification of positions, for establishing rates of pay; sets out requirements for transfers, suspensions, dismissals; provides for adjudication of some disputes; addresses political leave, layoffs and conflict of interest.

[29] The *PSLRA* applies to bargaining unit employees only. It establishes the Yukon Public Service Labour Relations Board; sets out the processes for union certification and collective bargaining; and the process of dispute resolution for grievances, including referrals to adjudication.

[30] The *PSA* and *PSLRA* intersect in the area of adjudication. Appeals of dismissals or suspensions of bargaining unit employees pursuant to the *PSA* may be made to an adjudicator appointed pursuant to the *PSLRA* (ss. 130-138 of the *PSA*). Adjudication pursuant to the *PSLRA* is available to an employee with a grievance arising from the collective agreement that has proceeded through each level of the grievance procedure in the collective agreement, with the approval of and representation by the bargaining unit agent (s. 78(1) and (2)).

[31] The collective agreement between YG and the PSAC/YEU, is also part of the scheme governing the workplace relationships for bargaining unit employees. Employee is defined as a member of the Bargaining Unit. Bargaining Unit is defined as all employees described in the Certificate issued by the Yukon Public Service Labour Relations Board on October 9, 1970 and amended in 1988. That certificate and amendment includes all employees of the employer, except those hired pursuant to the *School Act.* It includes probationary employees. Article 28.04 of the collective agreement also references s. 77 of the *PSLRA*, adjudication of grievances, setting out the entitlement of an employee to present a grievance. The collective agreement details the levels of grievance procedure up to adjudication.

Sections applicable to Probationary Employees

[32] The *PSA* contains specific sections about probationary employees (ss. 102-111). Every person appointed to a position in the public service must serve a probationary period of six months (s. 102) and the probationary period may be extended for further periods not exceeding six months (s. 103). A deputy head or unit head may at any time during the probationary period or extended probationary period reject the employee for cause on written notice (s. 104).

[33] The *PSLRA* addresses probationary employees directly in the section on adjudication of grievances. A probationary employee is not entitled to refer to adjudication, a grievance about release for cause during or at the end of the employee's probationary period (s. 78(3)).

[34] The collective agreement does not refer to probationary employees specifically except in Article 17.10, which refers to pay once probation is completed.

[35] As determined above, this dispute is about Mr. Ó Murchú's release from employment while on probation. This dispute is covered by the *PSA* (ss. 102-111), the *PSLRA* (s. 78(3)) and the collective agreement to the extent that probationary employees are part of the bargaining unit and subject to the collective agreement.

iii) Do the Collective Agreement and Legislation Oust the Court's Jurisdiction?

[36] In this case, the legislative scheme, although comprehensive, does leave some room for the court to exercise its jurisdiction.

[37] In order for the court's jurisdiction to be ousted, clear language is required in the governing legislation. Such provisions are referred to as privative clauses. They state that the decisions of the administrative body are final and binding and not subject to

review by the courts. These clauses can be strong or weak. Even the presence of a strong privative clause may not be enough to oust judicial review. Courts assess privative clauses to determine how much deference is owed to the administrative decision-maker. The stronger the wording in the clause, the more deference is owed.

[38] In this case, there is such a clause in the *PSLRA*. Section 78(4) provides: "[a] grievance submitted by the bargaining agent to the employer….may be referred to an adjudicator who shall determine the question and whose decision on the matter shall be **final and binding**" [emphasis added].

[39] This is a weak version of a privative clause. It is insufficient to oust the court's jurisdiction. The Court ruling in *ATU Local 583 v. Calgary (City)*, 2007 ABCA 121, supports this interpretation. In that case the issue was whether the arbitrator could take jurisdiction over a human rights complaint related to the employment dispute, and in effect oust the jurisdiction of the Human Rights Commission. The arbitrator relied on s. 136(g) of the Alberta *Labour Relations Code*, R.S.A. 2000, c. L-1, which states, "[t]he arbitrator shall inquire into the difference and issue an award in writing, and the award is **final and binding** on the parties and on every employee affected by it" [emphasis added]. The Court held at para. 57: "in my view, clearer and more explicit language would be needed to oust the jurisdiction of the Commission over all human rights issues that arise in a unionized workplace." In that case there was a competing statutory regime under the *Human Rights, Citizenship and Multiculturalism Act*, R.S.A. 2000, c. H-14, which also influenced the court's conclusion.

[40] Yet, just because the court does have some jurisdiction, the question remains as to whether they should exercise it. The Supreme Court of Canada in *Vaughan v. R.*,

2005 SCC 11, at para. 21 quoted *Pleau v. Canada (Attorney General)*, [1999] 182 D.L.R. (4th) 373 (N.S.C.A.) at p. 381: "[w]hile it takes very clear language to oust the jurisdiction of the superior courts as a matter of law, courts properly decline to exercise their inherent jurisdiction where there are strong policy reasons for doing so." Further at para. 39 of *Pleau*, the Court stated "an express grant of exclusive jurisdiction is not necessary to sustain judicial deference to the statutory dispute resolution process" citing *Gendron v. Supply & Services Union of the P.S.A.C., Local 50057*, [1990] 1 S.C.R. 1298.

iv) Should the Court Take Jurisdiction of this Dispute?

[41] This is a case where the Court should decline to take jurisdiction. There is a comprehensive legislative scheme that applies. The intention of the legislature is clearly not to provide the same rights to probationary employees as to regular employees. Mr. Ó Murchú has remedies for his issues, through an administrative appeal to the Deputy Minister and judicial review of the decision to release him from employment while on probation.

[42] The Supreme Court of Canada has in several decisions starting with *Weber v. Ontario Hydro,* [1995] 2 S.C.R. 929, written about the importance of court deference where there is a comprehensive labour relations scheme that applies to the dispute.

> …The more modern approach is to consider that labour relations legislation provides a code governing all aspects of labour relations, and that it would offend the legislative scheme to permit the parties to a collective agreement, or the employees on whose behalf it was negotiated, to have recourse to the ordinary courts which are in the circumstances a duplicative forum to which the legislature has not assigned these tasks (*St. Anne Nackawic Pulp & Paper Co. v. C.P.U., Local 219*, [1986] 1 S.C.R. 704 at

> p. 718-9, cited in *Alford v. Yukon (Public Service Commission*), 2006 YKCA 9, at para. 15) .

As noted in *Vaughan* at para. 13: "[l]abour relations has long been recognised as a field of specialised expertise. The courts have tended in recent years to adopt a hands-off (or "deferential") position towards expert tribunals operating in the field, including arbitrators. " This approach has been extended to other statutory regimes as well, demonstrated by the Court in *Regina Police Assn. Inc. v. Regina (City) Police Commissioners,* 2000 SCC 14, a case involving a statutory regime for police discipline, in which the Court wrote at para. 26: "the rationale for adopting the exclusive jurisdiction model was to ensure that the legislative scheme in issue was not frustrated by the conferral of jurisdiction upon an adjudicative body that was not intended by the legislature."

[43] The case of *Vaughan* is instructive for the case at bar. *Vaughan* raised the question of whether the "doctrine of judicial restraint (or deference) preached in the *Weber* line of authorities applies to the statutory labour relations scheme set out in the [federal] PSSRA [*Public Service Staff Relations Act*] which does not in its relevant aspects provide for independent adjudication" (para. 15).

[44] Mr. Ó Murchú's main argument is that the absence of an independent adjudication process for him to access results in an absence of effective redress for his dispute. The appeal to the Deputy Minister was not a review by a neutral, unbiased decision-maker. Mr. Ó Murchú said he was unaware that the decision could be judicially reviewed, and blames YG for not advising him of this possibility.

[45] In his oral submissions, Mr. Ó Murchú relied on the whistle-blower cases referred to in the *Vaughan* decision, *Pleau v. Canada (Attorney General)*, and *Guenette v.*

Canada (Attorney General), [2002] 60 O.R. (3d) 601 (O.N.C.A.). In both cases, the plaintiffs, who were federal government employees, alleged harassment or punishment by their superiors after they reported evidence of misconduct in the operation of a government facility, or mismanagement and waste of taxpayers' money. The actions were permitted to proceed in the courts, because "[t]he courts were understandably reluctant to hold that in such cases the employees' only recourse was to grieve in a procedure internal to the very department they blew the whistle on" (*Vaughan* at para. 20). In *Pleau,* at para. 52, the Court held, based on *Weber*, that "the capacity of the scheme to afford *effective redress* must be considered. Simply put, the concern is that where there is a right, there ought to be a remedy" (p. 391[emphasis in original]) (also quoted in *Vaughan*, para. 22).

[46] The Supreme Court of Canada in *Vaughan* however, did not agree with the Courts of Appeal in the whistle-blower cases that the absence of independent adjudication in the case before it was conclusive. The Court rejected the contention that any labour relations dispute that is grievable but not arbitrable can be litigated in court. It set out several examples of situations where an employee is not entitled to take a grievance to arbitration: such as where the union does not agree to carry it forward, or where there is legislation that governs the subject matter, such as legislated benefits, instead of benefits obtained through negotiation of the collective agreement.

> … When a benefit is conferred by statute or regulation, the conferring legislature is entitled to specify the machinery for its administration (*Ocean Port Hotel Ltd. v. British Columbia (General Manager, Liquor Control & Licensing Branch*), [2001] 2 S.C.R. 781, 2001 SCC 52 (S.C.C.), subject to a dissatisfied party having recourse to judicial review (*Vaughan*, para. 26).

[47] On the facts in *Vaughan* the Court held the appellant should not be litigating his claim to legislated benefits, but should have proceeded under the federal *PSSRA*. The general rule of deference applied, even though there was an absence of independent third party adjudication. The federal *PSSRA* did provide a remedy through the grievance procedure. “What is important is that the scheme provide a solution to the problem” (para. 80) *Phillips v. Harrison*, 2000 MBCA 150, quoted in *Vaughan* at para. 36. Further, the Court wrote at para. 22: “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.”

[48] In the case at bar, the operation of the *PSA*, the *PSLRA* and the collective agreement provide a comprehensive scheme to resolve labour disputes, the essence of this case. The *PSA* and *PSLRA* set out the legislated provisions for probationary employees. The Yukon Court of Appeal in *Alford v. Yukon (Public Service Commission)* 2006 YKCA 9, confirmed that Part 6 of the *PSA* “is an entire code for the appointment and termination of probationary employees” (para. 20). As noted above in para. 30, the legislature tied the appeal provisions in the *PSA* to the *PSLRA*, through the adjudication of appeal provisions. The *PSLRA* (s. 78(3)) precludes a probationary employee from adjudicating his release from employment, consistent with Part 6 of the *PSA*.

[49] The collective agreement does not address rights or remedies specifically for probationary employees, although probationary employees are clearly covered under the collective agreement. The parties chose not to negotiate provisions for probationary employees. This absence supports the position of YG, confirmed in *Alford* by the Yukon

Court of Appeal, that the labour legislation provides a complete code for probationary employees.

[50] This clear intention of the legislature to give limited rights to probationary employees, including no right to arbitration, is consistent with general principles applicable to probationary employees described by the courts. In *Alberta v. Alberta Union of Provincial Employees***,** 2008 ABCA 258, at para. 44, the Court of Appeal wrote:

> There is nothing inherently unfair or unreasonable about allowing an employer the right to select and screen those who will become permanent members of the workforce through a period of probationary employment. Probationary employment is equally important for the candidates for the job, particularly those who are marginally qualified, lack experience, or who have personal challenges but may nevertheless be capable of doing the work. Employers are much more likely to take a chance in hiring "high-risk" candidates, and to give such candidates a chance to prove themselves, if they know that probationary employment is truly probationary. If an employer believes that it will be stuck with such candidates, or will have to go through a distracting and expensive arbitration procedure if they do not work out, the employer may simply not hire them.

[51] Similarly, in *Loyalist College of Applied Arts and Technology v. Ontario Public Service Employees Union***,** [2003] 63 O.R. (3d) 641**,** at para. 58, the Court wrote:

> Probationary employees are typically thought of as serving a period of apprenticeship. During this period employers expect wider latitude in their decisions to dismiss new employees judged not suitable for continued employment. Thus, ordinarily probationary employees cannot expect the protection of the just cause provision enjoyed by those employees who have completed their probationary period.

[52] Mr. Ó Murchú did have a remedy in this case, consistent with the legislative intent. He was able to appeal the original decision to release him from employment to the Deputy Minister. This internal appeal policy required the most senior public servant

in the department to review the original decision to release, after hearing representations from Mr. Ó Murchú and his union representative as well as YG.

[53] Mr. Ó Murchú was also entitled to judicially review the decision to dismiss him. He complains that he was not advised of this option, another affront to his rights. However, Mr. Ó Murchú did have Union representation, whose role includes advising members on processes and remedies available to them, and he also could have sought independent legal advice about further remedies. In another Yukon case, *Wood v. Yukon (Highways and Public Works),* 2017 YKCA 4, at para. 23, Juanita Wood, a self-represented probationary employee who brought a civil claim against YG, did file a petition for judicial review of YG's decision to dismiss her while on probation, which the Court of Appeal confirmed was the correct way to proceed. This precedent was available to Mr. Ó Murchú and any of his advisors in October, 2017.

[54] On the basis of the statement of claim, this is not a whistle-blower case. While some of the allegations in Mr. Ó Murchú's statement of claim criticize the handling of certain files by YG, they do not rise to the level of allegations of misconduct, or significant mismanagement, with economic consequences to taxpayers. There is no policy justification to depart from the legislated scheme. Similar to the facts of *Vaughan*, where the proposed litigation related to legislated and not negotiated benefits, here the proposed litigation relates to the legislated and not negotiated rights and remedies for probationary employees. The legislation, which includes a procedure without arbitration, should be respected.

[55] Finally, the fact that Mr. O Murchu is seeking monetary damages that cannot be satisfied through the legislated or collective agreement processes, is not a sufficient

reason to allow the court to exercise its jurisdiction over the matter. In *Phillips v. Harrison,* 2000 MBCA 150, cited with approval by the Supreme Court of Canada in *Vaughan,* the Court of Appeal stated at para. 78:

> For the statutory process to provide effective redress, it is not necessary that the remedy be the same as the courts might have awarded. Thus, the mere inability of a statutory tribunal or arbitrator to award a specifically requested legal remedy should not, in and of itself, give courts jurisdiction over the matter.

CONCLUSION

[56] To conclude, I find that the essential character of this dispute is the wrongful termination of employment. It is covered by the comprehensive labour relations scheme applicable to bargaining unit employees, including probationary employees, consisting of the *PSA*, the *PSLRA* and the collective agreement. The legislature has made a clear choice to limit the rights on termination of probationary employees, a choice that has been consistently verified and upheld by courts because of the nature of probationary employment. The fact that there is no independent adjudicative process is not sufficient in and of itself to allow a dismissed probationary employee to access the courts. This is not a fact specific situation like the whistle blower cases where independent adjudication is fundamental to the merits of the case. The general rule of deference should apply here. Finally, Mr. Ó Murchú did have a remedy, part of which he did access – the appeal to the Deputy Minister – and judicial review of the decision to release him from employment. The Court should not exercise its jurisdiction to hear this case.

[57] For these reasons, I will grant the application of YG to strike the claim on the basis of Rule 20(26) for no reasonable cause of action, based on the requirement in this case for judicial deference to the legislated scheme.

II. Is the Statement of Claim Embarrassing?

[58] It is not necessary to consider the alternative argument of striking the claim because it is embarrassing, but I will provide my views in the event I am wrong in the above analysis. Mr. Ó Murchú is a self-represented litigant. Mr. Ó Murchú has conceded that his pleading does not conform to the *Rules of Court* and "is problematic" (see paras. 38-40). He says he understands the issues with parts of the Claim.

[59] When self-represented litigants appear before the Court, it is important to ensure they have access to justice and are not prejudiced by their lack of knowledge of complex court procedures and rules. As stated by *Statement of Principles on Self-represented Litigants and Accused Persons* (2006): https://www.scc-csc.ca/cso-dce/2017SCC-CSC23_1_eng.pdf (Canadian Judicial Council adopted September 2006) endorsed by the Supreme Court of Canada in *Pintea v. Johns*, 2017 SCC 23, "[j]udges should ensure that procedural and evidentiary rules are not used to unjustly hinder the legal interests of self-represented persons" (p. 7) and "[s]elf-represented persons should not be denied relief on the basis of a minor or easily rectified deficiency in their case"(p. 4).

[60] In these circumstances, I would give leave to Mr. Ó Murchú to amend his statement of claim to address the concerns of YG and any other issues he would like to address.

[61] Costs may be spoken to upon request.

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DUNCAN J.