



[2021] 4 F.C.R. D-19

LABOUR RELATIONS

Motion to strike applicants' judicial review application on grounds application premature — In application, applicants seeking to have *Policy on COVID-19 Vaccination for the Core Public Administration Including the Royal Canadian Mounted Police* (Vaccination Policy) declared invalid, retroactive reinstatement to positions, damages — As result of vaccine status, applicants placed on leave without pay as of November 15, 2021 — On December 6, 2021, applicants filing grievance seeking same remedies as those in application, except for general declaration Vaccination Policy unlawful — Grievances not yet determined at time of motion — Respondent arguing case law consistently holding that, barring exceptional circumstances, applicant's failure to exhaust all administrative remedies justifying dismissing application — Applicants claiming case law not applying here because grievance process under *Federal Public Sector Labour Relations Act*, S.C. 2003, c 22, s. 2, s. 208 not available as result of ss. 208(4),(6) exceptions — Whether grievance process available, adequate, effective; if so, whether exceptional circumstances existing to justify proceeding with judicial review — Absent exceptional circumstances, applicants required to avail themselves of grievance process before applying to Court for judicial review — Subject-matter of application clearly falling within Act, ss. 208(1), entitling applicants to file grievance — Limitations imposed by ss. 208(2) to (7) on individual right to grieve inherent part of grievance process — Interpreting such limitations, determining whether these apply falling exclusively to grievance authority — Relieving employee from obligation of using grievance process on ground that this very process deliberately providing certain limitations potentially rendering grievance inadmissible nonsensical, illogical — Even if applicants' grievance dismissed by operation of Act, ss. 208(4) or (6), not meaning grievance procedure inadequate or ineffective, but simply that Act not permitting challenge on issues as framed in grievance — In applying test by which Court may exercise its inherent jurisdiction or residual discretion in cases where no adequate or effective administrative process existing, capacity of process to adequately resolve dispute, if right to afford effective redress exists, should not be confused with guarantee that employee will obtain resolution or relief sought — No uncertainty in this case as to availability of grievance process, only as to admissibility of grievance in light of exceptions provided — Respondent discharging burden of establishing availability of adequate, effective process for resolving claim, notwithstanding possibility, even certainty, that grievance may be dismissed by operation of one of exceptions contemplated in ss. 208(2) to (7) — Applicants not discharging their burden of establishing that grievances clearly excluded by ss. 208(4) or (6) — Applicants misguided in invoking concept of balance of convenience as part of analytical framework for determining existence of exceptional circumstances — Of all factors raised by applicants, only those entailing urgency to act, irreparable harm might meet high threshold for exceptional circumstances — No exceptional circumstances allowing Court to depart from doctrine of exhaustion by agreeing to hear application — Motion granted.

MURPHY V. CANADA (ATTORNEY GENERAL) (T-1718-21, 2022 FC 146, Tabib P., reasons for order dated February 7, 2022, 24 pp.)