

**SUPREME COURT OF CANADA**

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| **Citation:** Manuge *v.* Canada, 2010 SCC 67, [2010] 3 S.C.R. 672 | **Date:** 20101223  **Docket:** 33103 |

**Between:**

**Dennis Manuge**

Appellant

and

**Her Majesty The Queen**

Respondent

**Coram:** Binnie, LeBel, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.

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| **Reasons for Judgment:**  (paras. 1 to 24) | Abella J. (Binnie, LeBel, Deschamps, Charron, Rothstein and Cromwell JJ. concurring) |

Manuge *v.* Canada, 2010 SCC 67, [2010] 3 S.C.R. 672

**Dennis Manuge** *Appellant*

*v.*

**Her Majesty The Queen** *Respondent*

**Indexed as:**Manuge ***v.*** Canada

2010 SCC 67

File No.:  33103.

2010:  January 20, 21; 2010:  December 23.

Present:  Binnie, LeBel, Deschamps, Abella, Charron, Rothstein and Cromwell JJ.

on appeal from the federal court of appeal

*Courts — Federal Court — Procedure — Plaintiff bringing action in Federal Court against federal Crown for constitutional remedies, declaratory relief and damages arising from establishment, modification and application of long‑term disability benefits plan — Whether plaintiff entitled to proceed by way of action without first proceeding by way of judicial review — Federal Courts Act, R.S.C. 1985, c. F‑7, ss. 17, 18.*

In 2002, M was injured and was awarded a monthly disability pension under the *Pension Act* in addition to his salary as a memberof the Canadian Forces. In 2003, he was given an involuntary, medically required release and was approved to receive long‑term disability benefits under the Canadian Forces’ disability plan. For 24 months following his release, M received both a disability pension and long‑term disability benefits, but, pursuant to s. 24(a)(iv) of the plan, the amount he received from his disability pension was deducted monthly from the amount he received for long‑term disability. M brought an action in the Federal Court seeking, among other relief, constitutional remedies, declaratory relief and damages in relation to these deductions. The Federal Court certified the proceeding as a class action. The Federal Court of Appeal allowed the Crown’s appeal based on *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287, concluding that the lawfulness of a decision or administrative activity like s. 24(a)(iv) of the plan can only be challenged by judicial review.

Held: The appeal should be allowed.

In accordance with *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, the Federal Court has jurisdiction to entertain the action. At their core, the pleadings represent a claim for alleged breaches of s. 15(1) of the *Canadian Charter of Rights and Freedoms* and the action need not, therefore, be stayed in favour of an application for judicial review.

**Cases Cited**

**Applied:** *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585; **overruled:** *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287; **referred to:** *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959; *Canada (Attorney General) v. McArthur*, 2010 SCC 63, [2010] 3 S.C.R. 626; *Nu‑Pharm Inc. v. Canada (Attorney General)*, 2010 SCC 65, [2010] 3 S.C.R. 648.

**Statutes and Regulations Cited**

*Act to amend the statute law in relation to veterans’ benefits*, S.C. 2000, c. 34.

*Canadian Charter of Rights and Freedoms*, ss. 15(1), 24.

*Canadian Forces Members and Veterans Re‑establishment and Compensation Act*, S.C. 2005, c. 21.

*Crown Liability and Proceedings Act*, R.S.C. 1985, c. C‑50, s. 21.

*Federal Courts Act*, R.S.C. 1985, c. F‑7, ss. 2, 17(1), 18, 18.1, 18.4(2).

*Federal Courts Rules*, SOR/98-106, rr. 334.1, 334.12, 334.16.

*National Defence Act*, R.S.C. 1985, c. N‑5, s. 39(1).

*Pension Act*, R.S.C. 1985, c. P‑6.

**Authors Cited**

Canada. Department of National Defence and Canadian Forces. Ombudsman. *Unfair Deductions From SISIP Payments to Former CF Members*. Ottawa: The Department, 2003 (online: www.ombudsman.forces.gc.ca/rep-rap/sr-rs/sis-rar/doc/sis-rar-eng.pdf).

APPEAL from a judgment of the Federal Court of Appeal (Létourneau, Noël and Blais JJ.A.), 2009 FCA 29, [2009] 4 F.C.R. 478, 384 N.R. 313, 73 C.C.P.B. 1, [2009] F.C.J. No. 73 (QL), 2009 CarswellNat 160, setting aside a decision of Barnes J., 2008 FC 624, [2009] 1 F.C.R. 416, 329 F.T.R. 167, 71 C.C.P.B. 112, [2008] F.C.J. No. 787 (QL), 2008 CarswellNat 1495. Appeal allowed.

Peter J. Driscoll, Michael Sobkin, Ward K. Branch and Daniel F. Wallace, for the appellant.

Christopher M. Rupar, Alain Préfontaine and Bernard Letarte, for the respondent.

The judgment of the Court was delivered by

1. Abella J. — For 24 months following his involuntary, medically required release from the Canadian Forces, Dennis Manuge received both a disability pension and long-term disability benefits. Pursuant to the terms of the relevant policies, the amount Mr. Manuge received for his disability pension was deducted monthly from the amount he received for long-term disability. Mr. Manuge brought proceedings in the Federal Court seeking constitutional remedies, damages, declarations and restitution in relation to these deductions. His complaint is not with the deductions *per se*, but with the fact that they have not been universally applied to everyone who received Canadian Forces disability benefits.
2. The question in this appeal is whether Mr. Manuge, before commencing the action, must first seek judicial review of the provision of the disability benefit plan that authorized the deductions. Following *Canada (Attorney General) v. TeleZone Inc.*, 2010 SCC 62, [2010] 3 S.C.R. 585, heard with this appeal, it is clear that the Federal Court has jurisdiction to entertain the action. However, *TeleZone* alsostates that there is a residual discretion to stay an action that is essentially a veiled application for judicial review. The Crown suggests that the claim in this case is such an application. With respect, given what I see as the essential character of that claim, the discretion to grant a stay should not be exercised.

**Background**

1. Dennis Manuge is a former memberof the Canadian Forces. He served from 1994 until 2003. In 2002, he was injured to such an extent that he was unable to continue with his regular duties.Pursuant to the *Pension Act*, R.S.C. 1985, c. P-6,Mr. Manuge was awarded a monthly disability pension known as a “VAC benefit” — calculated in relation to his injury, not his pre-disability earnings—in the amount of $386.28. He was awarded this benefit in addition to his monthly Canadian Forces salary of $3,942. Mr. Manuge tried to continue his work, but in December 2003 was given an involuntary, medically required release. For 24 months following his release, Mr. Manuge received benefits under both the *Pension Act* and the Canadian Forces’ Service Income Security Insurance Plan Long Term Disability Plan (“SISIP LTD Plan”). Under s. 24(a)(iv) of the SISIP LTD Plan, however, each of the 24 monthly LTD benefit payments he received was reduced, from an amount equal to 75 percent of his pre-release monthly income, by the amount of the *Pension Act* benefit he also received.
2. The SISIP LTD Plan was issued in 1969, as part of a document entitled SISIP Policy 901102, pursuant to s. 39(1) of the *National Defence Act*, R.S.C. 1985, c. N-5. Section 39(1) grants the Chief of the Defence Staff discretion to dispose of “[n]on-public property acquired by contribution” for the benefit of members of the Canadian Forces or their dependants.
3. In 1976, Part III(B) of the SISIP Policy was amended to include s. 24(a)(iv), which reduces monthly benefits payable under the SISIP LTD Plan by the value of any monthly benefits received under the *Pension Act* (like the VAC benefit that Mr. Manuge received):

24. Other Relevant Sources of Income

a. The monthly benefit payable at Section 23 shall be reduced by the sum of:

. . .

(iv) the total monthly income benefits payable to the member under the Pension Act . . . .

1. In 2000, the *Act to amend the statute law in relation to veterans’ benefits*, S.C. 2000, c. 34, came into force. This Act allows members who have suffered a disability during service, but whocan still work, to collect a *Pension Act* disability benefit while also receiving their salaries. Mr. Manuge claims that because s. 24(a)(iv) reduces only those payments made pursuant to the SISIP LTD Plan, those members who were able to continue their service — and thus were not receiving SISIP LTD benefits — did not have their primary source of income reduced by the value of the *Pension Act* benefits they also received.
2. The *Canadian Forces Members and Veterans Re-establishment and Compensation Act*, S.C. 2005, c. 21 (the “New Veterans Charter”), came into force on April 1, 2006. That Act replaced monthly benefits under the *Pension Act* with a one-time, lump sum payment. The lump sum payment is not a “monthly benefit” within the meaning of s. 24(a)(iv) of the SISIP LTD Plan, and is therefore not deducted from SISIP LTD benefits. The effect of the enactment of the New Veterans Charter is that members injured on or after April 1, 2006, and entitled to both a SISIP LTD benefit and a lump sum payment, are not subject to a reduction of their SISIP LTD benefits. Those, like Mr. Manuge, who were subject to a reduction before the enactment of the New Veterans Charter, are not entitled to compensation for amounts previously deducted. Nor are those injured before April 1, 2006 entitled to a lump sum payment. Instead, they continue to receive monthly *Pension Act* benefits which, pursuant to s. 24(a)(iv), result in a reduction of their SISIP LTD benefits.
3. On March 15, 2007, Mr. Manuge filed a statement of claim with the Federal Court, challenging the reduction to his SISIP LTD benefits on a variety of grounds and seeking constitutional remedies, damages, restitution and declarations. He later applied to the Federal Court for the certification of his action as a class action pursuant to rule 334.16 of the *Federal Courts Rules*, SOR/98-106. He purports to represent approximately 4000 other former Canadian Forces members similarly affected by s. 24(a)(iv).
4. In his statement of claim,Mr. Manuge alleges that

(i) section 24(a)(iv) is unlawful, *ultra vires* and contrary to the *Pension Act*;

(ii) the Crown has breached the public law obligations owed to Mr. Manuge and the class under the *Pension Act*;

(iii) section 24(a)(iv) infringes s. 15(1) of the Canadian Charter of *Rights and Freedoms* and is not saved by s. 1;

(iv) the Crown has been unjustly enriched;

(v) the Crown is a fiduciary and has breached the fiduciary duties owed to Mr. Manuge and the class; and that

(vi) The Crown has acted in bad faith.

1. Mr. Manuge seeks declaratory relief and, pursuant to s. 24 of the *Charter*, damages equal to the amount “unlawfully and wrongfully deducted” pursuant to s. 24(a)(iv) from the SISIP LTD benefits paid to the class. In the alternative, he seeks damages in that amount. In the further alternative, he seeks an order for restitution. Finally, Mr. Manuge claims “liability and general damages” for discrimination, breach of fiduciary duties and bad faith, and seeks punitive, exemplary and aggravated damages, interest, and costs of the action.
2. Mr. Manuge relies on various government documents to support his contention that the scheme as a whole operates unfairly and that the amendments to the SISIP LTD Plan were made in bad faith. Among those documents is a special report prepared by the Ombudsman for the Department of National Defence and Canadian Forces in October 2003 entitled *Unfair Deductions From SISIP Payments to Former CF Members*. In that report, the Ombudsman highlighted the disparate treatment experienced by serving Canadian Forces members and those released for medical reasons as follows:

Serving CF members receiving disability pensions through VAC under the *Pension Act* do not have their income reduced because of the pension they receive to compensate them for their disability. It simply does not seem fair that injured and ill members who are released from the CF for medical reasons should have their disability insurance benefit paid, which is intended to replace their income as CF members, reduced because of the same pension benefits. [p. 14]

The Ombudsman sent follow-up letters to the Minister of National Defence in 2005 and 2007, stating that the deduction of benefits under the *Pension Act* from SISIP LTD Plan benefits was unfair to former members like Mr. Manuge.

1. The Crown opposed certification of Mr. Manuge’s claim as a class action. Relying on *Canada v. Grenier*, 2005 FCA 348, [2006] 2 F.C.R. 287, the Crown argued that an action was not the appropriate procedure for attacking the validity or lawfulness of a federal administrative decision, which can only be done by way of an application for judicial review. In the Crown’s view, in establishing and modifying the SISIP LTD Plan, the Chief of the Defence Staff was acting as a “federal board, commission or other tribunal” within the meaning of s. 2 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. The Crown took the position that each of the claims pleaded in the statement of claim would have to be determined based on the validity of the decision to include *Pension Act* benefits in the list of SISIP LTD Plan deductions in s. 24(a)(iv).
2. On Mr. Manuge’s motion for certification in the Federal Court, Barnes J. noted that the decision to include s. 24(a)(iv) in the SISIP LTD Plan was made years ago by the Chief of the Defence Staff, and that what Mr. Manuge was challenging was the lawfulness of the policy as reflected in s. 24(a)(iv) and the corresponding action to reduce his monthly income under the Plan (2008 FC 624, [2009] 1 F.C.R. 416). Barnes J. accepted that, “on its face” (para. 15), Mr. Manuge’s claim falls within s. 18(3) of the *Federal Courts Act*, and that “each and every occasion that Mr. Manuge and the other proposed class members are subject to the offset of VAC benefits from their SISIP income, they have a fresh claim to relief and a corresponding right to judicially attack the lawfulness of the policy giving rise to the reduction in benefits” (para. 18). However, he found that this case is unlike *Grenier* for two reasons: the decision at issue is not discrete in a temporal sense; and the action cannot be seen as a true collateral attack aimed at avoiding the short time bar on judicial review (paras. 15 and 18). As such, he concluded that the concerns about collateral attack, finality, and deference to the administrative decision maker animating *Grenier* did not “obviously apply” in this case (para. 21).
3. He went on to hold that “the strictness of the *ratio* in *Grenier* can be mitigated in appropriate cases by the authority to convert an application for judicial review into an action” pursuant to s. 18.4(2) of the *Federal Courts Act* (para. 21). He concluded, applying the test in *Hunt v. Carey Canada Inc.*, [1990] 2 S.C.R. 959, that the pleadings disclosed a reasonable cause of action, and certified the action as a class action.
4. The Federal Court of Appeal, applying *Grenier*, allowed the Crown’s appeal*.* It concluded that the lawfulness of a decision or administrative activity like s. 24(a)(iv) of the SISIP LTD Plan could only be challenged in judicial review proceedings (2009 FCA 29, [2009] 4 F.C.R. 478). In such proceedings, the monthly decision to reduce the benefits could be declared invalid or unlawful. Liability stemming from an unlawful decision could be assessed separately in a legal action for damages. The court further held that Barnes J. could not notionally use s. 18.4(2) of the *Federal Courts Act* to convert the proceedings into an action.
5. The Federal Court of Appeal gave Mr. Manuge 30 days to serve and file an application for judicial review and suspended his action until a final decision had been made on that application. The court noted that Mr. Manuge could apply, should he wish to do so, for certification of his application for judicial review as a class proceeding (see rules 334.1 and 334.12 of the *Federal Courts Rules*).  Mr. Manuge applied for judicial review on March 4, 2009. He also appealed the decision of the Federal Court of Appeal to this Court.

**Analysis**

1. Following *TeleZone*, there is no question that the Federal Court has jurisdiction to entertain Mr. Manuge’s claim as an action for damages: *Federal Courts Act*, s. 17(1); *Crown Liability and Proceedings Act*, R.S.C. 1985, c. C-50, s. 21; *TeleZone*, at paras. 19-23 and 43-46; *Canada (Attorney General) v. McArthur*, 2010 SCC 63, [2010] 3 S.C.R. 626, at para. 17; *Nu-Pharm Inc. v. Canada (Attorney General)*, 2010 SCC 65, [2010] 3 S.C.R. 648, at para. 16. Mr. Manuge’s pleadings disclose claims against the Crown seeking remedies that the Federal Court has authority to grant in an action.
2. But under *TeleZone*, there is a residual discretion to stay an action if it is premised on public law considerations to such a degree that, in Binnie J.’s words, “in its essential character, it is a claim for judicial review with only a thin pretence to a private wrong” (para. 78). The Crown’s argument, in essence, is that Mr. Manuge’s action should be stayed on that basis.
3. The exercise of the discretion to stay an action in this context is dependent on an identification of the essential character of the claim as an assertion of either private law or public law rights. I agree with the Crown that some of Mr. Manuge’s claims raise issues that are amenable to judicial review. However, the question is not just whether some aspects of Mr. Manuge’s pleadings could be addressed under ss. 18 and 18.1 of the *Federal Courts Act*, but what, in their essential character, his claims are for.
4. In my view, with respect, the discretion to grant a stay should not be exercised in this case. In the context of deciding the certification motion, Barnes J. has already addressed the question of whether the claims alleged reasonable causes of action (paras. 39-41). He concluded that the “allegations of unlawfulness, *ultra vires* and a breach of subsection 15(1) of the Charter easily meet the legal threshold of a reasonable cause of action” (para. 39). Further, he was not prepared to find that it was plain and obvious that Mr. Manuge could not succeed in his “rather sparse” allegations of breach of fiduciary duty and unjust enrichment (paras. 40-41). The Crown does not ask us to interfere with these findings. Assuming that such reasonable causes of action exist, their presence rebuts the Crown’s suggestion that Mr. Manuge’s claims for damages disclose “only a thin pretence to a private wrong” (*TeleZone*, at para. 78).
5. At their core, Mr. Manuge’s claims are less about assessing the exercise of delegated statutory authority or the decision-making process that led to the promulgation or “monthly application” of s. 24(a)(iv), and more about s. 15(1) of the *Charter*. He pleads that the scheme violates s. 15(1) of the *Charter* because it draws a distinction, based on the degree and extent of disability, between the claimants who are allegedly adversely affected because they are unable to continue to serve and are thus subject to the s. 24(a)(iv) deduction — and those who are able to continue to serve and who are not subject to the deduction. He also alleges that the scheme violates s. 15(1) by subjecting those injured prior to April 1, 2006, to less advantageous treatment than those injured on or after April 1, 2006. It is essentially for these alleged breaches that Mr. Manuge seeks constitutional remedies and damages. As *TeleZone* states, “[i]f the plaintiff has a valid cause of action for damages, he or she is normally entitled to pursue it” (para. 76).
6. In my view, therefore, the residual discretion should not be exercised to stay Mr. Manuge’s class action in the Federal Court.
7. It is worth noting that the pleadings are far from models of legal clarity. I would, accordingly, emphasize that nothing in these reasons should be read as precluding the Crown from challenging any of them in the usual manner by seeking, for example, particulars or other clarifications.
8. I would allow the appeal and reinstate the order of Barnes J. certifying Mr. Manuge’s class action.

*Appeal allowed.*

Solicitors for the appellant:  McInnes Cooper, Halifax.

Solicitor for the respondent:  Department of Justice, Ottawa.