Federal Court Cour fédérale

**Date: 20260106**

**Docket: T-1666-25**

**Citation: 2026 FC 7**



**Ottawa, Ontario, January 6, 2026**

**PRESENT: The Honourable Madam Justice Turley**

**BETWEEN:**

**ILANA DOMB**

**Applicant**

**and**

**HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL DEFENCE**

**Respondent**

# JUDGMENT AND REASONS

## I. Overview

[1] The Applicant seeks judicial review of a decision of the Final Authority of the Canadian Armed Forces [CAF] dated April 11, 2025, made under section 29.11 of the *National Defence Act*, RSC 1985, c N-5. The Final Authority dismissed the Applicant's June 2022 grievance contesting

the refusal to promote her to the rank of Sergeant pursuant to a grandfathering provision of the CAF's *Military Employment Structure Implementation Plan* [MESIP].

[2] The Respondent concedes that the Final Authority's decision is unreasonable because of the failure to engage with the Applicant's June 2024 further submissions. The Respondent submits that the decision should thus be set aside, and the matter remitted for redetermination by a different Final Authority. On this basis, the Respondent brings this motion for judgment, arguing that the application is now moot.

[3] The Applicant, however, opposes the Respondent's motion and seeks to have her application for judicial review determined on its merits. She asserts that the matter is not moot because there remain outstanding procedural and jurisdictional issues to resolve. Alternatively, the Applicant argues that, if the Court does not hear the application on its merits, it should remit the matter for redetermination with specific directions to the new Final Authority to ensure procedural fairness. I cannot agree with the Applicant on either front.

[4] For the reasons set out below, I am granting the Respondent's motion. I agree that the judicial review application is moot, and it is not in the interest of judicial economy for the Court to exercise its discretion to hear the moot application on its merits. Furthermore, in the circumstances, there is no basis to issue the directions requested by the Applicant. I am, however, directing that the Applicant be provided an opportunity to make further submissions before her grievance is redetermined by a new Final Authority decision-maker.

## II. Background

[5] In October 2016, the Applicant enrolled in the CAF as a musician at the rank of Private. It was agreed that she would hold the rank of Corporal after the successful completion of her Basic Military Qualification training: Letter dated September 9, 2016, Affidavit of Lorri Warner affirmed October 15, 2025 [Warner Affidavit], Exhibit 1, Respondent's Motion Record [RMR] at 7.

[6] Until 2016, CAF members of the musician occupation of the Regular Force benefited from a separate promotion policy, different from the one applicable to most non-commissioned members. Under this policy, most musicians were promoted from Corporal to Sergeant once they met certain criteria: *Jaffray v Canada (Attorney General)*, 2021 FC 532 at para 5 [*Jaffray*].

[7] In November 2016, a new ranking policy, the MESIP, came into effect. The MESIP repealed the previous policy on rank structure and subjected musicians to the standard promotion policy for non-commissioned members, the *Canadian Forces Administrative Order 49-4* [CFAO 49-4]. It also introduced the rank of Master Corporal between the ranks of Corporal and Sergeant, created positions at the Corporal and Master Corporal ranks, and reduced the number of Sergeant positions: *Jaffray* at para 8.

[8] The MESIP also included a grandfathering provision that exempted musicians who had joined the CAF's Regular Forces prior to 2014 from this new rank structure. This provision ensured

that these musicians were still subject to the previous promotion criteria of the *Canadian Forces Administrative Order 9-8* [CFAO 9-8]: *Jaffray* at para 9.

[9] Two musicians who had joined the CAF after 2014, who did not qualify under the grandfathering provision, filed judicial review applications before this Court: *Jaffray*; *Denneboom v Canada (Attorney General)*, 2021 FC 531. The Court allowed the applications, concluding that the Final Authority's respective decisions were unreasonable.



[10] Following these decisions, the CAF developed a new directive. Under this directive, musicians in the Regular Forces who had completed the Qualification Level [QL] 6A [Reg F QL6A] by November 30, 2016, served six months in the Regular Forces, and were awaiting Primary Leadership Qualification, would be retroactively promoted to Sergeant on the day they attained six months of Regular Forces Service: "Recent Promotions to Sergeant Within the Regular Force Musician Occupation" dated July 22, 2022, Warner Affidavit, Exhibit 4, RMR at 39–40. It was determined that the Applicant did not qualify for promotion under this new directive.

[11] In June 2022, the Applicant grieved her exclusion from the application of the MESIP's grandfathering provision. She asserted that had her application to enrol in the CAF been processed earlier, she would have been enrolled sooner and thus qualified for promotion to Sergeant under the former policy: Applicant's Grievance Submission dated June 17, 2022, Warner Affidavit, Exhibit 5, RMR at 45.

[12] The Initial Authority denied the Applicant's grievance, ultimately finding that she did not meet the criteria for retroactive promotion under the grandfathering provision. Further, it was determined that she had been treated fairly in accordance with the applicable rules, regulations, and policies: Letter dated October 5, 2022, Warner Affidavit, Exhibit 8, RMR at 60–62. The Applicant requested that her grievance be forwarded to the Final Authority: Letter dated November 9, 2022, Warner Affidavit, Exhibit 9, RMR at 64–65.



[13] On May 2, 2024, the Applicant was advised that it was "likely" that the Final Authority would reach the conclusion that the Initial Authority's decision was reasonable. She was given the opportunity to provide additional information for the Final Authority's consideration before a decision was rendered: Email dated May 2, 2024, Warner Affidavit, Exhibit 10, RMR at 67. In her further submissions, the Applicant raised several procedural fairness issues, including "full disclosure of the issues", the lack of a *de novo* review by the Final Authority, and knowledge of the "case to meet": Email dated June 5, 2024, Warner Affidavit, Exhibit 11, RMR at 69–72.

[14] The Final Authority denied the Applicant's grievance, agreeing with the Initial Authority and adopting their reasoning: Final Authority Decision, Warner Affidavit, Exhibit 12, RMR at 79–81. The Applicant seeks judicial review of this decision.

## III. Analysis

### A. *The application for judicial review is moot*

#### (1) The legal test

[15] Mootness is assessed based on the two-part test set out in *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 [*Borowski*]. The first question is whether the proceeding is moot, particularly "whether a live controversy remains that affects or may affect the rights of the parties": *Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 10 [*Democracy Watch*].

[16] If there is no live controversy, then the second question arises: whether the Court should exercise its discretion to nevertheless hear the matter: *Democracy Watch* at para 10.

[17] In deciding whether to hear a moot case, three factors guide the Court's exercise of discretion: (i) the absence or presence of an adversarial context; (ii) the concern for judicial economy; and (iii) the Court's proper law-making role: *Borowski* at 358–363; *Hakizimana v Canada (Public Safety and Emergency Preparedness)*, 2022 FCA 33 at para 20 [*Hakizimana*]; *Democracy Watch* at para 13.

[18] The application of these factors is not "a mechanical process": *Democracy Watch* at para 13. The extent to which each of the three factors is engaged depends on the circumstances of the case and one may outweigh the others: *Sinclair v Canada (Attorney General)*, 2023 FC 750 at

para 18; *NNS Organics Limited v Canada (Health)*, 2020 FC 819 at para 40; *Canada (Public Safety and Emergency Preparedness) v Allen*, 2019 FC 932 at para 14 [*Allen*]. As articulated by Justice Norris, "the ultimate question is what is in the interests of justice": *Allen* at para 14.

(2) There is no longer a live controversy

[19] The Respondent concedes that the Final Authority's decision is unreasonable because the Final Authority failed to engage with or comment on the Applicant's further submissions of June 5, 2024. As a remedy, the Respondent submits that the Final Authority's decision should be set aside, and the matter remitted to a different Final Authority for redetermination. Based on this concession, the Respondent asserts that the application for judicial review is now moot. I agree.

[20] As the Respondent puts it, the relief sought on this motion is "the same core relief the Applicant has requested in her Amended Notice of Application": Respondent's Written Submissions at para 3. In her application, the Applicant sought the following relief: (1) an order setting aside the Final Authority's decision; (2) an order requiring a new, fair determination by a differently constituted Final Authority; and (3) costs of the application, if appropriate: Amended Notice of Application, Warner Affidavit, Exhibit 14, RMR at 88.

[21] The Applicant opposes the motion, arguing that, despite the Respondent's concession, her application for judicial review is not moot. She asserts that there remain outstanding procedural and jurisdictional issues for the Court's resolution, beyond the Final Authority's failure to engage with her further submissions, that the Respondent has not conceded: Applicant's Written Representations at para 21.

[22] The Court addressed this very same issue in *Yusuf v Canada (Public Safety and Emergency Preparedness)*, 2024 FC 1454 [*Yusuf*], finding the application was moot. In that case, the respondent conceded the underlying decision was unreasonable and brought a motion allowing the application for judicial review and remitting the matter for redetermination by a different decision-maker. As in this case, the applicant objected, arguing that there was another issue that the respondent had not conceded. Justice Norris determined that, while the respondent had not conceded this other issue, that issue was "rendered moot by the respondent's agreement that the matter must be redetermined": *Yusuf* at para 22. This same reasoning is equally applicable here.

[23] On redetermination, the new Final Authority decision-maker will have to contend with the Applicant's grievance afresh, taking into consideration all the evidence and submissions filed. As the Respondent points out, "the matter will be remitted for a full redetermination": Respondent's Reply at para 10. Ultimately, if there is another adverse decision, the Applicant has the right to seek judicial review before this Court: *Yusuf* at para 36.

[24] Given the Respondent's concession, there is no longer a live controversy for this Court to adjudicate.

(3) It is not in the interest of judicial economy to hear the moot application

[25] The second factor relating to judicial economy strongly militates against hearing this moot application. The Federal Court of Appeal has emphasized the particular significance of this factor: "[m]ootness in judicial reviews has assumed new prominence in light of the recent encouragement

given to reviewing courts to avoid needless hearings": *Public Service Alliance of Canada v Canada (Attorney General)*, 2021 FCA 90 at para 6.

[26] There is simply no practical utility in hearing the application on its merits. A hearing will not result in a different outcome than the relief the Court is now granting on this motion; that is, setting the Final Authority decision aside and remitting it for redetermination by a different decision-maker. It would therefore be a waste of scarce judicial resources to allow this application to proceed on its merits, rather than granting this motion: *Hakizimana* at para 20.

B. *Requested directions on remittal are not appropriate*

[27] In accordance with paragraph 18.1(3)(b) of the *Federal Courts Act*, RSC 1985, c F-7 [*Act*], on judicial review, the Court has the discretion to refer a matter back to the decision-maker "with such directions as it considers appropriate".

[28] In the alternative, the Applicant asserts that, on remittal to a new Final Authority, the Court should issue clear, binding "directions addressing the jurisdictional defects, breaches of procedural fairness, and failure to comply with mandatory consultation and referral obligations" as set out in her written representations filed on this motion: Applicant's Written Representations at para 2. However, with respect, it remains unclear what specific directions the Applicant is seeking.

[29] To the extent that the Applicant is asking this Court to dictate the procedure to be followed on redetermination, the Court refused to do so in *Yusuf* (aside from ordering that the Applicant be given an opportunity to provide further evidence and submissions). As Justice Norris held, "it is

not this Court's role to dictate in advance the procedure the administrative decision maker should follow in the applicant's particular case": *Yusuf* at para 36.

[30] Furthermore, the Applicant argues that she will be prejudiced if the Court simply remits the matter to a new decision-maker without issuing the directions that she seeks: Applicant's Written Representations at para 31. I am unable to agree. To reiterate, the fact that the Respondent has only conceded the failure of the Final Authority to consider the Applicant's further submissions is of no consequence. On redetermination, her grievance will be considered anew. The new Final Authority will be required to engage with the Applicant's evidence and submissions on all matters raised, whether they are procedural, jurisdictional, or substantive.

[31] While I decline to issue the Applicant's requested directions under subsection 18.1(3) of the *Act*, in my view, it is appropriate to direct that the Applicant be given an opportunity to provide further submissions to the new Final Authority. Based on my review of the Applicant's written submissions filed on this motion, it appears that the Applicant only became aware of some of the procedural and jurisdictional errors she now raises after receiving the Certified Tribunal Record [CTR]. For example, the Applicant refers to jurisdictional concerns with the Initial Authority's decision that were identified in the CTR materials: Applicant's Written Representations at paras 9, 14–17. In the circumstances, the Applicant should be given the opportunity to raise these concerns for consideration with the new Final Authority on redetermination.

## IV. Conclusion

[32] Based on the foregoing, the Respondent's motion for judgment is granted. The Final Authority's decision dated April 11, 2025, is set aside, and the matter is remitted for redetermination by a different Final Authority decision-maker.

[33] The Applicant should be provided the opportunity to submit further submissions to the new Final Authority.

[34] The Respondent has not sought their costs of this motion, and I agree that none should be payable by the self-represented Applicant. While the Applicant asks the Court to consider an award of costs in her favour, there is no basis to make such an award.

**JUDGMENT in T-1666-25**

**THIS COURT'S JUDGMENT is that:**

1. The Respondent's motion for an order allowing the application for judicial review is granted.
2. The application for judicial review is granted, the decision of the Final Authority dated April 11, 2025, is set aside, and the matter is remitted for redetermination by a different Final Authority decision-maker.
3. The Applicant should be given an opportunity to provide further submissions to the new Final Authority decision-maker.
4. There are no costs awarded.

"Anne M. Turley"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-1666-25 |
| **STYLE OF CAUSE:** | ILANA DOMB v HIS MAJESTY THE KING IN RIGHT OF CANADA AS REPRESENTED BY THE MINISTER OF NATIONAL DEFENCE |

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*, SOR/98-106**

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| **JUDGMENT AND REASONS:** | TURLEY J. |
| **DATED:** | JANUARY 6, 2026 |

**WRITTEN REPRESENTATIONS BY:**

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| Ilana Domb | FOR THE APPLICANT ON HER OWN BEHALF |
| Jack Townsend | FOR THE RESPONDENT |

**SOLICITORS OF RECORD:**

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| Attorney General of Canada<br>Halifax, Nova Scotia | FOR THE RESPONDENT |