

Federal Court



Cour fédérale

Date: 20260303

Docket: T-3964-25

Citation: 2026 FC 295

Ottawa, Ontario, March 3, 2026

PRESENT: Madam Justice Conroy

BETWEEN:

**DR. BRAD GLADMAN
DR. ANDREW BILLYARD**

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Respondent Attorney General of Canada brings a motion in writing to strike the applications for judicial review [Applications] filed by Dr. Gladman and Dr. Billyard [Applicants].

[2] After the motions to strike were filed, Associate Judge Steele ordered that the Applications be consolidated and the motions to strike be determined by the same judge.

[3] The Applicants are scientists with the Department of National Defence [DND]. Each of the Applications seek judicial review of decisions dated September 12, 2025, by the Deputy Minister of National Defence [Decisions]. The Decisions confirmed the denial of each Applicants' promotion to the DS-06 group and level.

[4] The Respondent argues the Applications are premature because the Applicants have failed to exhaust the administrative recourse available to them, namely the grievance process set out in the *Federal Public Sector Labour Relations Act*, SC 2003, c 22 [FPSLRA].

[5] The Applicants argue the Applications are not premature because s. 208(2) of the FPSLRA bars the individual grievance process.

[6] The motion is granted. For the reasons that follow, the Applications are premature and shall therefore be struck.

I. Legal Test to Strike Judicial Review for Prematurity

[7] The threshold to dismiss an application for judicial review is a high one. The Court will strike a notice of application only where it is “so clearly improper as to be bereft of any possibility of success” (*David Bull Laboratories (Canada) Inc v Pharmacia Inc*, 1994 CanLII 3529 (FCA)). “There must be a ‘showstopper’ or a ‘knockout punch’ — an obvious, fatal flaw striking at the root of this Court’s power to entertain the application” (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at para 47 [*JP Morgan*]).

[8] One such fatal flaw is the failure to exhaust all available effective administrative remedies before filing an application for judicial review. Absent exceptional circumstances, such a failure will justify striking an application for judicial review on a preliminary motion: *CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at para 31 [*CB Powell*].

II. Discussion

[9] The Applicants are classified as Defence Scientists [DS] within the Research Group bargaining unit represented by the Professional Institute of the Public Service of Canada. Staffing for the DS group is governed by an “incumbent-based process” pursuant to the *Public Service Employment Act*, SC 2003, c 22, s. 34(1) [PSEA] and the *Public Service Employment Regulations*, SOR/2005-334, s 2 [PSER].

[10] As incumbent-based positions, promotions for the Applicants are subject to a Career Progression Framework. They can seek recourse through the Independent Recourse Mechanism [IRM] if they are unhappy with a decision made under the Career Progression Framework. The impugned Decisions were issued following a third-party review under the IRM process.

[11] The Respondent argues that the Applicants ought to have exhausted the grievance process under the FPSLRA before seeking judicial review. The Applicants have not commenced any grievance processes.

[12] Under the FPFLRA, the right to grieve is available to both unionized and non-unionized employees: *Murphy v Attorney General of Canada*, 2023 FC 57 at para 13 [*Murphy Appeal*]. The relevant parts of s. 208 state:

Individual Grievances

Presentation

Right of employee

208 (1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved

(a) by the interpretation or application, in respect of the employee, of

(i) a provision of a statute or regulation, or of a direction or other instrument made or issued by the employer, that deals with terms and conditions of employment, or

(ii) a provision of a collective agreement or an arbitral award; or

(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.

Limitation

(2) An employee may not present an individual grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.

Griefs individuels

Présentation

Droit du fonctionnaire

208 (1) Sous réserve des paragraphes (2) à (7), le fonctionnaire a le droit de présenter un grief individuel lorsqu'il s'estime lésé :

a) par l'interprétation ou l'application à son égard :

(i) soit de toute disposition d'une loi ou d'un règlement, ou de toute directive ou de tout autre document de l'employeur concernant les conditions d'emploi,

(ii) soit de toute disposition d'une convention collective ou d'une décision arbitrale;

b) par suite de tout fait portant atteinte à ses conditions d'emploi.

Réserve

(2) Le fonctionnaire ne peut présenter de grief individuel si un recours administratif de réparation lui est ouvert sous le régime d'une autre loi fédérale, à l'exception de la *Loi canadienne sur les droits de la personne*.

[13] The Respondent argues that the Decisions can be grieved under s.208(1) of the FPSLRA either because: (a) they deal with the interpretation or application of the IRM policy (FPSLRA, s. 208(1)(a)(i)), or (b) they are matters affecting the Applicant’s terms and conditions of employment (FPSLRA, s. 208(1)(b)).

[14] The Applicants do not dispute the doctrine of exhaustion as set out in *CB Powell* at paragraph 31. They agree that where a grievance process is available it ought to be exhausted before a judicial review. However, they say that s. 208(2) limits their right to present individual grievances.

[15] The Applicants submit that the IRM process, created pursuant to the PSEA and PSER is “is an administrative procedure for redress” as contemplated in s. 208(2) and therefore cannot form the basis of a grievance. Accordingly, they assert that since they have exhausted the IRM process, there is no further administrative process available to them and the Decisions are amenable to judicial review.

[16] The Applicants do not assert that there are exceptional circumstances that would warrant a departure from the doctrine of exhaustion. Rather, their argument is that they are not seeking early recourse to the court which would require exceptional circumstances.

[17] The decision in *Murphy v. Attorney General of Canada*, 2022 FC 146 [*Murphy*], as affirmed in the *Murphy Appeal*, is determinative of this motion.

[18] The ratio in the *Murphy* cases and my conclusion here aligns with the well-established principle “that the first resort in employment-related matters should be the comprehensive labour relations regime”: *Public Service Alliance of Canada v. Canada (Attorney General)*, 2020 FC 481 [PSAC] at para 83. The courts, including the Supreme Court of Canada, has long counseled for a posture of restraint and deference by courts in labour and employment matters: *Vaughan v Canada*, 2005 SCC 11 at paras 2, 13 and 39 [Vaughn]; *Weber v Ontario Hydro*, 1995 CanLII 108 (SCC), [1995] 2 SCR 929, at para 54; PSAC at 46 to 83. “[W]here Parliament has clearly created a scheme for dealing with labour disputes ... courts should not jeopardize the comprehensive dispute resolution process contained in the legislation by permitting routine access to the courts”: *Vaughn* at para 39. As explained by Justice Kane in PSAC at paragraph 73, “[t]he complexity of the labour relations environment underlines the importance of resorting first to the relevant labour relations statutes and administrative processes to resolve labor and employment related issues”.

[19] Section 236 (1) and (2) of the FPSLRA reinforce this approach.

[20] I agree with the Respondent. The Decisions can be grieved under s. 208(1) of the FPSLRA. They clearly affect the terms and conditions of the Applicants’ employment. When disputes clearly relate to an employee’s terms and conditions of employment, the employee is required to use the grievance process to resolve it before resorting to judicial review: *Murphy* at para 25; *Gupta v. Attorney General of Canada*, 2021 FCA 202 [Gupta FCA]; *Vaughn*.

[21] Once the Respondent “has established that the Applicants are employees to whom the grievance process under subsection 208(1) is available, it has discharged its burden of establishing the availability of an adequate and effective process for resolving the claim, notwithstanding the possibility or even the certainty that the grievance may be dismissed by operation of one of the exceptions contemplated in subsections 208(2) to (7)”: *Murphy* at para 29 (emphasis added). This conclusion affirmed by Justice Rochester in the *Murphy Appeal* at paragraph 77:

.... the fact that the limitations contained in subsections 208(2) through (6) may result in an individual grievance being inadmissible does not render the grievance process inadequate or ineffective such that it permits an applicant to bring a judicial review prior to completing the statutory grievance process.

[22] The limits on the grievance process imposed by subsections 208(2) are an inherent part of the grievance process. “Interpreting these limitations and determining whether they apply in the particular circumstances of a grievance falls exclusively to the grievance authority”: *Murphy* at para 25. It is not for this Court to be the first to determine the extent to which the limitation in s. 208(2) may apply – that is the purview of the grievance authority: *Murphy Appeal* at para 75. Accordingly, this Court need not and ought not determine whether s. 208(2) would preclude any grievance filed by the Applicants from proceeding.

[23] The case law confirms that once it is determined that the dispute falls within the parameters of s. 208(1), the burden then shifts to the Applicants to establish that the grievance procedure is “clearly not available” in the circumstances: *Murphy* at para 33; *Murphy Appeal* at para 80. The Applicants rely solely on s. 208(2) to meet this burden. As explained above, the

applicability of and interpretation of s. 208(2) is for the grievance authority, not the Court to determine: *Murphy* at para 25; *Murphy Appeal* at para 75.

[24] If the Applicants are not content with the outcome of the grievance process, they may then seek judicial review of the final grievance decision.

[25] It is acknowledged that this Court has considered the merits of judicial reviews that challenge decisions by the Deputy Minister following the IRM process (*Gultepe v. Canada (Attorney General)*, 2015 FC 645; *Gultepe v. Canada (Attorney General)*, 2016 FC 1404), including with respect to Defence Scientists employed by DND (*Rabbath v Canada (National Revenue)*, 2014 FC 999; *Gladman v Canada (Attorney General)*, 2016 FC 917). However, these cases do not speak to the issue of prematurity or the availability of the grievance process. Presumably because the parties did not raise this argument. Accordingly, I do not accept these cases as authority for the proposition that the grievance procedure is not available to incumbent-based employees subject to the IRM process. In fact, the *Gupta Appeal* case would indicate otherwise (at para 13).

III. Costs

[26] The Respondent has requested and is entitled to costs.

[27] If the parties cannot agree on the quantum of the cost award, they may make submissions to the Court on the issue. Each party's submission shall not exceed 3 pages. The Respondent may

file their submissions within seven days of receipt of these reasons. The Applicants may file their response within seven days of receiving the Respondent's cost submissions.

ORDER in T-3964-25

THIS COURT ORDERS that:

1. The Respondent's motion to strike the Notices of Application on matter T-3964-25 is granted;
2. The Respondent is awarded costs. If the parties cannot agree on the quantum of the cost award, they shall provide cost submissions as set out in the reasons for judgment.

"Meaghan M. Conroy"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-3964-25

STYLE OF CAUSE: DR. BRAD GLADMAN AND DR. ANDREW
BILLYARD v ATTORNEY GENERAL OF CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER AND REASONS: CONROY J.

DATED: MARCH 3, 2026

WRITTEN SUBMISSIONS BY:

Isabelle Roy-Nunn Sarah-Claude L'Ecuyer	FOR THE APPLICANTS
Alexandre Toso	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Goldblatt Partners LLP Ottawa, Ontario	FOR THE APPLICANTS
Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT