

Federal Court



Cour fédérale

Date: 20260303

Docket: T-2481-25

Citation: 2026 FC 291

Ottawa, Ontario, March 3, 2026

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

MARIA MAKRIKOSTAS

Applicant

and

**THE CANADA BORDER SERVICES
AGENCY**

Respondent

REASONS AND ORDER

[1] By a notice of application filed on July 17, 2025 Ms. Makrikostas (the “Applicant”) seeks judicial review of a letter (the “Letter”) dated May 27, 2025, sent to her by the Canada Border Services Agency (the “CBSA” or the “Respondent”). The letter sets out a number of options

relative to resolving the Applicant's employment after a lengthy period of sick leave without pay.

[2] The CBSA filed a notice of motion on September 25, 2025 for consideration without personal appearance pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 (the "Rules"), seeking an order to strike out the application for judicial review in its entirety, without leave to amend, and dismissing the application for judicial review.

[3] In support of its motion, the Respondent filed the affidavit of Ms. Julie Nunez, sworn on September 24, 2025. At the time, Ms. Nunez was the Director General of Wellness, Labour Relations and Compensation with the CBSA.

[4] According to the Index of Recorded Entries maintained by the Court, the notice of motion and motion record were served upon the Applicant by email on September 24, 2025, and an affidavit of service in that regard was filed by the Respondent on September 25, 2025.

[5] The Applicant did not respond to the notice of motion within the time limited by the Rules.

[6] Ms. Nunez deposed about her background and experience in the field of Human Resources over many years, including employment with the CBSA.

[7] Ms. Nunez also deposed that the Applicant is an indeterminate employee with the CBSA and occupied a position as a Border Services Officer at the FB-03 group and level within the Commercial Operations District, Greater Toronto Area Region.

[8] The CBSA is part of the “core public administration” as defined in section 11 of the *Financial Administration Act*, R.S.C., 1985, c. F-11. His Majesty the King in right of Canada, as represented by the Treasury Board, is the employer of the core public administration.

[9] Ms. Nunez deposed that the Applicant is a member of the Customs and Immigration Union (the “Union”) which is part of the Public Service Alliance of Canada (“PSAC”).

[10] Ms. Nunez deposed that PSAC is certified as the bargaining agent for most employees in the Border Services Group of which the Applicant is a member. She deposed that the Applicant is subject to the terms and conditions of the Border Services Collective Agreement.

[11] Ms. Nunez further deposed that the Applicant is an “employee” within the meaning of subsection 206(1) of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22 (the “Act”). Section 208 sets out grievance rights.

[12] Ms. Nunez also deposed that the Applicant had been on leave without pay for illness and/or injury since January 9, 2020. She deposed that the approved leave expired on May 2, 2025, and was later extended until June 25, 2025. No further leave was approved.

[13] Ms. Nunez deposed that pursuant to the Treasury Board's *Directive on Leave and Special Working Arrangements* (the "Directive"), the CBSA began to resolve the Applicant's situation of leave without pay. The resolution included the transmission of the Letter to the Applicant.

[14] The Respondent moves to strike out the application for judicial review in its entirety and without leave to amend on the ground that it is premature, since the Letter is not a final "decision" but a step in a continuing process that can lead to access to grievance processes. The availability of grievance processes invokes the principles of an adequate alternative remedy which is another basis for striking out the application.

[15] The Respondent first addresses the submission of an affidavit in support of its motion, since generally no affidavit evidence is permitted upon a motion to strike an application for judicial review. The decision in *J.P. Morgan Asset Management (Canada) Inc. v. Canada (Revenue Agency)*, 2013 FCA 250 at paragraph 53 allows the introduction of affidavit evidence "where the justifications for general inadmissibility are not undercut, and the exception is in the interests of justice".

[16] The Respondent also submits that the introduction of an affidavit is permissible when the issue of jurisdiction arises, relying on the decision in *Kaquitts v. Council of the Chiniki First Nation*, 2019 FC 498 at paragraph 10.

[17] As well, the Respondent argues that affidavit evidence is admissible when it is relevant to the existence of an adequate alternative remedy. An application for judicial review, alone, usually does not set out the allegations of fact on that issue.

[18] In this case, the Respondent submits that it is in the interests of justice to allow the filing of an affidavit to set out the facts upon which the availability of an adequate alternative remedy can be assessed, relying on the decision in *Picard v. Canada (Attorney General)*, 2019 CanLII 97266 FC.

[19] I am satisfied on the basis of the authorities cited by the Respondent that the affidavit of Ms. Nunez is admissible upon this motion. It provides the factual context for the motion, to allow the Court to address the issues of prematurity and adequate alternate remedy.

[20] The Applicant seeks judicial review of the Letter of May 27, 2025. According to the affidavit of Ms. Nunez, this letter sets out three options about the Applicant's employment following an extended period of leave.

[21] Subsection 18.1(1) of the *Federal Courts Act* (R.S.C., 1985, c. F-7), is relevant and provides as follows:

Application for judicial review

18.1 (1) An application for judicial review may be made by the Attorney General of Canada or by anyone directly affected by the matter in respect of which relief is sought.

Demande de contrôle judiciaire

18.1 (1) Une demande de contrôle judiciaire peut être présentée par le procureur général du Canada ou par quiconque est directement touché par l'objet de la demande.

[22] In its decision in *Air Canada v. Toronto Port Authority*, [2013] 3 F.C.R. 605, the Federal Court of Appeal said that to be subject to judicial review, the conduct of an administrative body must affect legal rights, impose legal obligations or cause prejudicial effects.

[23] In the present case, the Letter sets out options. It is not a final decision, but according to the affidavit of Ms. Nunez, part of a process which is incomplete.

[24] The Respondent refers to the decision in *Dugré v. Canada (Attorney General)*, 2020 FC 789 where the Court said that interlocutory decisions of an administrative decisionmaker are not reviewable.

[25] The decision in *Dugré, supra* applies here.

[26] More importantly, Ms. Nunez addresses the significance of the Applicant's status as an employee of the CBSA which is included in the "core public administration".

[27] Ms. Nunez deposed to the fact that the Applicant remains an employee of the public service. She is a member of the Union which is part of PSAC. As such, she is subject to the provisions of the Act, which governs labour relations in the federal public service. The grievance process is available in respect of issues arising in the context of employment.

[28] Subsection 208(b) is relevant and provides as follows:

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

...

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

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 :

...

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

[29] Subsection 209(1) of the Act is also relevant and provides as follows:

Reference to adjudication

209 (1) An employee who is not a member as defined in subsection 2(1) of the Royal Canadian Mounted Police Act may refer to adjudication an individual grievance that has been presented up to and including the final level in the grievance process and that has not been dealt with to the employee's satisfaction if the grievance is related to

(a) the interpretation or application in respect of the employee of a provision of a collective agreement or an arbitral award

(b) a disciplinary action resulting in termination, demotion, suspension or financial penalty;

(c) in the case of an employee in the core public administration,

(i) demotion or termination under paragraph 12(1)(d) of the Financial Administration Act for unsatisfactory performance or under paragraph 12(1)(e) of that Act for any other reason that does not relate to a breach of discipline or misconduct, or

Renvoi d'un grief à l'arbitrage

209 (1) Après l'avoir porté jusqu'au dernier palier de la procédure applicable sans avoir obtenu satisfaction, le fonctionnaire qui n'est pas un membre, au sens du paragraphe 2(1) de la Loi sur la Gendarmerie royale du Canada, peut renvoyer à l'arbitrage tout grief individuel portant sur :

(a) soit l'interprétation ou l'application, à son égard, de toute disposition d'une convention collective ou d'une décision arbitrale;

(b) soit une mesure disciplinaire entraînant le licenciement, la rétrogradation, la suspension ou une sanction pécuniaire;

(c) soit, s'il est un fonctionnaire de l'administration publique centrale :

(i) la rétrogradation ou le licenciement imposé sous le régime soit de l'alinéa 12(1)d) de la Loi sur la gestion des finances publiques pour rendement insuffisant, soit de l'alinéa 12(1)e) de cette loi pour toute raison autre que l'insuffisance du rendement, un manquement à la discipline ou une inconduite,

(ii) deployment under the Public Service Employment Act without the employee's consent where consent is required; or

(ii) la mutation sous le régime de la Loi sur l'emploi dans la fonction publique sans son consentement alors que celui-ci était nécessaire;

(d) in the case of an employee of a separate agency designated under subsection (3), demotion or termination for any reason that does not relate to a breach of discipline or misconduct.

(d) soit la rétrogradation ou le licenciement imposé pour toute raison autre qu'un manquement à la discipline ou une inconduite, s'il est un fonctionnaire d'un organisme distinct désigné au titre du paragraphe (3).

[30] This provision gives an employee in the core public administration the opportunity to refer a grievance to the Federal Public Relations Board (the "Board"). Decisions of the Board can be judicially reviewed by the Federal Court of Appeal.

[31] Pursuant to section 214 of the Act, a final decision upon a grievance can be judicially reviewed by this Court.

[32] The Applicant has access to the grievance process by two routes. I agree with the submissions of the Respondent that a final decision upon a grievance can be the subject of an application for judicial review, in due course.

[33] I also agree with the position of the Respondent that by now seeking judicial review in respect of an interim step, the Applicant is trying to avoid the grievance process set out in the Act.

[34] The Respondent also addresses section 236 of the Act which bars a right of action by a federal public servant in respect of employment related issues:

Disputes relating to employment

236 (1) The right of an employee to seek redress by way of grievance for any dispute relating to his or her terms or conditions of employment is in lieu of any right of action that the employee may have in relation to any act or omission giving rise to the dispute.

Application

(2) Subsection (1) applies whether or not the employee avails himself or herself of the right to present a grievance in any particular case and whether or not the grievance could be referred to adjudication.

Exception

(3) Subsection (1) does not apply in respect of an employee of a separate agency that has not been designated under subsection 209(3) if the dispute relates to his or her termination of employment for any reason that does not relate to a breach of discipline or misconduct.

Différend lié à l'emploi

236 (1) Le droit de recours du fonctionnaire par voie de grief relativement à tout différend lié à ses conditions d'emploi remplace ses droits d'action en justice relativement aux faits — actions ou omissions — à l'origine du différend.

Application

(2) Le paragraphe (1) s'applique que le fonctionnaire se prévale ou non de son droit de présenter un grief et qu'il soit possible ou non de soumettre le grief à l'arbitrage.

Exception

(3) Le paragraphe (1) ne s'applique pas au fonctionnaire d'un organisme distinct qui n'a pas été désigné au titre du paragraphe 209(3) si le différend porte sur le licenciement du fonctionnaire pour toute raison autre qu'un manquement à la discipline ou une inconduite.

[35] The Respondent then submits that the Court must consider whether the matter raised in the application for judicial review may be the subject of a grievance. The Applicant's notice of application seeks to review the "lawfulness and fairness of the administrative decision to issue the CBSA's letter dated May 27, 2025".

[36] I agree with the position of the Respondent. The Letter relates to the Applicant's employment. The subject matter is "grievable". The Applicant cannot sidestep the statutory grievance process.

[37] The Respondent also argues that the Applicant has not identified any “exceptional circumstance” that would justify the prosecution of her application for judicial review, at this time. It refers to the decision of the Federal Court of Appeal in *Dugré v. Canada (Attorney General)* 2021 FCA 8 at paragraph 37 where that Court highlighted the high bar for interference with the orderly completion of administrative processes, as follows:

In short, the non-availability of interlocutory relief is next to absolute. A less stringent criterion would only encourage premature forays into courts and a resurgence of the ills identified in *C.B. Powell*. Hence, certain recent attempts by the Federal Court to restate the settled test by refining criteria for exceptions are ill-advised and should not be viewed as authoritative (see *Whalen v. Fort McMurray No. 468 First Nation*, 2019 FC 732, [2019] 4 F.C.R. 217, at paras. 20-21 and subsequent Federal Court cases). Although well-intentioned, these attempted restatements only serve to muddy the waters and compromise the rigour of the principle of non-interference.

[38] I agree with the Respondent’s submissions on this issue.

[39] The subject of the application relates to the terms and conditions of the Applicant’s employment as a federal public servant. Her status in that regard is not affected by the fact that she has been on leave of absence.

[40] The comprehensive statutory scheme set out in the Act applies. There are no grounds for the Applicant to bypass that process. The Letter is part of an ongoing administrative process which should not be interrupted.

[41] The application for judicial review filed by the Applicant will be struck out in its entirety, without leave to amend.

[42] The Respondent seeks costs in the amount of \$500.00, should its motion be granted.

[43] The Court enjoys full discretion in the matter of costs, pursuant to Rule 400(1) of the Rules.

[44] In the exercise of that discretion, I award the amount of \$250.00 in costs to the Respondent, inclusive of disbursements and HST.

ORDER in T-2481-25

THIS COURT'S ORDER is that the Respondent's motion is granted, the application for judicial review is dismissed in its entirety and without leave to amend, costs to the Respondent in the amount of \$250.00 inclusive of disbursements and HST.

"E. Heneghan"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2481-25

STYLE OF CAUSE: MARIA MAKRIKOSTAS v. THE CANADA BORDER SERVICES AGENCY

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

REASONS AND ORDER: HENEGHAN J.

DATED: MARCH 3, 2026

WRITTEN REPRESENTATIONS BY:

Tiffany Farrugia

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT