Federal Court Cour fédérale

Date: 20260430

Docket: T-1453-26

Citation: 2026 FC 581

2026 FC 581 (CanLII)

Ottawa, Ontario, April 30, 2026

PRESENT: The Honourable Mr. Justice Gleeson

BETWEEN:

MICHELLE OLSHESKI

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant (the responding party on this motion) is a federal public service employee of the Department of National Defence. She has brought a notice of application [NOA] seeking judicial review under section 18.1 of the *Federal Courts Act*, RSC 1985, c F-7, of a February 24, 2026 decision of the Chief Military Judge that allocated shared workspace to the Applicant following a review of workspace allocation.

[2] The Respondent (the moving party on this motion) brings this motion in writing pursuant to Rule 369 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] seeking an order striking the NOA in its entirety, without leave to amend, and costs on the motion. In the alternative, the Respondent seeks an order requiring the Certified Tribunal Record be transmitted within 20 days of the Court's decision.

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[3] The sole issue that arises is whether the NOA should be struck in its entirety, without leave to amend, because it is premature due to the non-exhaustion of adequate alternative remedies.

[4] The Respondent takes the position that the Applicant has failed to exhaust adequate alternative remedies because she has failed to pursue a grievance under the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2 [FPSLRA]. The Applicant takes the position that the Respondent has mischaracterized the nature of the NOA, that a serious arguable issue arises, and that the NOA therefore cannot be said to be bereft of any possibility of success.

[5] For the reasons that follow, the motion will be granted. I am of the opinion that the application for judicial review is premature and must be dismissed on that basis.

II. Background

[6] The following facts are not in dispute:

A. The Applicant is a Senior Legal Researcher with the Office of the Chief Military Judge;

B. On February 24, 2026, a decision of the Chief Military Judge was communicated to the Applicant confirming her allocation to a cubicle workspace following a review of workspace allocation; and

C. On March 24, 2026, the Applicant filed the NOA.

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III. Applicable Legal Principles

A. *Motions to strike*

[7] An NOA for judicial review will be struck only where it is "so clearly improper as to be bereft of any possibility of success." There must be an obvious and fatal flaw that strikes at the root of the Court's authority to entertain the NOA (*JP Morgan Asset Management (Canada) Inc v Canada (National Revenue)*, 2013 FCA 250 at para 47 [*JP Morgan*]).

[8] In considering whether an NOA is bereft of any possibility of success, it must be read "with a view to understanding the real essence of the application" (*JP Morgan* at para 49). A holistic and practical reading of the NOA is required to appreciate its "essential character" (*JP Morgan* at para 50).

[9] Where the shortcomings of an NOA are such that the high threshold to strike has been met, the Court should nonetheless consider whether those shortcomings may be cured by way of amendment. If so, leave to amend should be granted (*McLaughlin v Canada (Attorney General)*, 2022 FC 1466 at para 52, citing *Al Omani v Canada*, 2017 FC 786 at paras 32–35).

B. *The principle of judicial non-interference in ongoing administrative processes*

[10] The principle of judicial non-interference in ongoing administrative processes is a well established and vigorously enforced principle of administrative law.

[11] The principle is described in a variety of ways in the jurisprudence, for example as the doctrine of adequate alternative remedies or the doctrine of exhaustion. Regardless of how the principle is described, it stands for the requirement that parties are required, absent exceptional circumstances, to pursue all effective remedies available to them in an administrative process before proceeding to a court, and that a court should not interfere with ongoing administrative processes until they are complete.

[12] The principle promotes judicial economy by avoiding unnecessary judicial proceedings and ensuring that when a reviewing court does become involved, that court will have the benefit of the decision-maker's "expertise, legitimate policy judgments and valuable regulatory experience." The principle also furthers the concept of judicial respect for administrative decision-makers (*CB Powell Limited v Canada (Border Services Agency)*, 2010 FCA 61 at paras 30–33 [*CB Powell*]).

[13] In *CB Powell*, the Federal Court of Appeal recognized that the principle has been vigorously enforced by courts across the country and that the "exceptional circumstances" exception is narrow – "[c] oncerns about procedural fairness or bias, the presence of an important legal or constitutional issue, or the fact that all parties have consented to early recourse to the

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courts are not exceptional circumstances… as long as th[e administrative] process allows the issues to be raised and an effective remedy to be granted” (at para 33).

IV. Analysis

A. *The decision in issue is a grievable matter*

[14] The Respondent argues that the decision identified in the Applicant’s NOA is a matter or result that is grievable pursuant to section 208 of the FPSLRA, which states as follows:

208(1) Subject to subsections (2) to (7), an employee is entitled to present an individual grievance if he or she feels aggrieved	**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) by the interpretation or application, in respect of the employee, of	**a)** par l’interprétation ou l’application à son égard :
(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	**(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) a provision of a collective agreement or an arbitral award; or	**(ii)** soit de toute disposition d’une convention collective ou d’une décision arbitrale;
(b) as a result of any occurrence or matter affecting his or her terms and conditions of employment.	**b)** par suite de tout fait portant atteinte à ses conditions d’emploi.
(2) An employee may not present an individual	**(2)** Le fonctionnaire ne peut présenter de grief individuel si

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grievance in respect of which an administrative procedure for redress is provided under any Act of Parliament, other than the *Canadian Human Rights Act*.

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*.

(3) Despite subsection (2), an employee may not present an individual grievance in respect of the right to equal pay for work of equal value.

(3) Par dérogation au paragraphe (2), le fonctionnaire ne peut présenter de grief individuel relativement au droit à la parité salariale pour l’exécution de fonctions équivalentes.

(4) An employee may not present an individual grievance relating to the interpretation or application, in respect of the employee, of a provision of a collective agreement or an arbitral award unless the employee has the approval of and is represented by the bargaining agent for the bargaining unit to which the collective agreement or arbitral award applies.

(4) Le fonctionnaire ne peut présenter de grief individuel portant sur l’interprétation ou l’application à son égard de toute disposition d’une convention collective ou d’une décision arbitrale qu’à condition d’avoir obtenu l’approbation de l’agent négociateur de l’unité de négociation à laquelle s’applique la convention collective ou la décision arbitrale et d’être représenté par cet agent.

(5) An employee who, in respect of any matter, avails himself or herself of a complaint procedure established by a policy of the employer may not present an individual grievance in respect of that matter if the policy expressly provides that an employee who avails himself or herself of the complaint procedure is precluded from presenting an individual grievance under this Act.

(5) Le fonctionnaire qui choisit, pour une question donnée, de se prévaloir de la procédure de plainte instituée par une ligne directrice de l’employeur ne peut présenter de grief individuel à l’égard de cette question sous le régime de la présente loi si la ligne directrice prévoit expressément cette impossibilité.

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(6) An employee may not present an individual grievance relating to any action taken under any instruction, direction or regulation given or made by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.	**(6)** Le fonctionnaire ne peut présenter de grief individuel portant sur une mesure prise en vertu d'une instruction, d'une directive ou d'un règlement établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.
(7) For the purposes of subsection (6), an order made by the Governor in Council is conclusive proof of the matters stated in the order in relation to the giving or making of an instruction, a direction or a regulation by or on behalf of the Government of Canada in the interest of the safety or security of Canada or any state allied or associated with Canada.	**(7)** Pour l'application du paragraphe (6), tout décret du gouverneur en conseil constitue une preuve concluante de ce qui y est énoncé au sujet des instructions, directives ou règlements établis par le gouvernement du Canada, ou au nom de celui-ci, dans l'intérêt de la sécurité du pays ou de tout État allié ou associé au Canada.

[15] Paragraph 208(1)(b) provides for an extremely broad right to grieve – any occurrence or matter affecting the terms and conditions of employment. As this Court has recognized, "[a]lmost all employment-related disputes can be grieved under s 208" (*McCarthy v Canada (Attorney General)*, 2020 FC 930 at para 31 [*McCarthy*], citing *Bron v Canada (Attorney General)*, 2010 ONCA 71 at paras 14–15).

[16] The Applicant does not directly argue that the decision in issue is not grievable, but instead argues the NOA does not seek to challenge the employment outcome. Instead, the Applicant submits the NOA challenges the legality of the process leading to the decision, thereby

engaging "core procedural fairness principles." To that end, the NOA identifies numerous grounds that seek to establish the decision is unreasonable.

[17] I am not persuaded that the NOA does not challenge the employment outcome as the Applicant submits. While I acknowledge that the NOA also challenges the process leading to the decision, this is of little assistance to the Applicant. As noted above, section 208 establishes a broad right to grieve. Nothing in the language of 208(1)(b) suggests that the "legality of a decision-making process," including the alleged absence of disclosed criteria, any articulated procedural structure, or a meaningful participatory process, cannot be grieved.

[18] That these issues may also arise in the context of this Court exercising its judicial review jurisdiction does not exclude these matters from the process provided for at section 208 of the FPSLRA. The question is not whether this Court could review, or is positioned to review, the challenged decision; rather, the question to be asked is whether the matter is grievable.

[19] I am satisfied that the workspace allocation decision, including the process by which that decision was reached, is grievable under section 208 of the FPSLRA.

B. *The NOA is bereft of any possibility of success*

[20] The Applicant argues that the existence of the grievance process does not automatically bar judicial review – the principle of judicial non-interference is not absolute, the Applicant submits, and the Respondent has failed to establish the high threshold that would allow the NOA to be struck. The Applicant also argues that the challenge to the administrative decision-making

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process is neither frivolous nor vexatious, and it is at least arguable that the workspace allocation decision is final because it imposes immediate legal consequences on her.

[21] As I have noted above, determining whether an NOA is bereft of any possibility of success requires the Court to consider the essential character or real essence of the NOA.

[22] The decision in issue relates to the allocation of employee workspace and, as already discussed, challenges the reasonableness of the decision and the fairness of the process leading to it. The NOA alleges factual errors and legal missteps as the grounds for pursuing the NOA.

[23] A holistic and practical reading of the NOA demonstrates that in its essence, it seeks a determination to the effect that occurrences or matters affecting the Applicant's terms and conditions of employment were erroneously reached. These are clearly matters that, as I have already concluded, are grievable under the FPSLRA. Because they are grievable, the principle of judicial non-interference in ongoing administrative processes is engaged.

[24] In *McCarthy* at para 42, Justice Nicholas McHaffie notes that the principle has been applied repeatedly in the specific context of applications for judicial review prior to completion of the statutory grievance process under the FPSLRA. He cites a number of cases in support of this and, then states:

> [43] Against these authorities, Mr. McCarthy has raised no examples where the Court has addressed an application for judicial review on its merits after determining that the subject matter is grievable under the *FPSLRA*. Nor has he raised any exceptional circumstances that might militate in favour of hearing the

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> application for judicial review, so as to raise a possibility of success on his application...
>
> [Emphasis added.]

[25] The circumstance Justice McHaffie highlights in *McCarthy* exists here. I therefore conclude, as did he, that having considered (1) the essential character of the NOA, (2) the jurisprudence establishing that available grievance procedures must be exhausted before initiating an NOA, and (3) in the absence of any exceptional circumstances, that the Applicant's NOA is bereft of any possibility of success.

[26] The NOA will be struck. The NOA cannot be saved by way of amendment, and therefore leave to amend will not be granted.

V. Conclusion

[27] The motion is granted. The Respondent seeks and shall have their costs.

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ORDER IN T-1453-26

THIS COURT ORDERS that:

1. The motion is granted.

2. The Notice of Application filed on March 24, 2026, is struck without leave to amend.

3. The Respondent shall have their costs in accordance with Column II of Tariff B of the *Federal Courts Rules*, SOR/98-106.

"Patrick Gleeson"

Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1463-26
STYLE OF CAUSE:	MICHELLE OLSHESKI v ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	OTTAWA, ONTARIO

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

ORDER AND REASONS:	GLEESON J.
DATED:	APRIL 30, 2026

WRITTEN REPRESENTATIONS BY:

Michelle Olsheski	FOR THE APPLICANT (ON HER OWN BEHALF)
Courtland Mack	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Ottawa, Ontario	FOR THE RESPONDENT

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