

CANADA / JUDGMENT

Cook v. Canada (Attorney General)

2026 FC 415

COURT

Federal Court

DECIDED

31 March 2026

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Cook v. Canada (Attorney General)

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T-4571-25

Decision Content

Date: 20260331

Docket: T-4571-25

Citation: 2026 FC 415

Ottawa, Ontario, March 31, 2026

PRESENT: The Honourable Mr. Justice Régimbald

BETWEEN:

CODY COOK

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview [1] The Respondent, Attorney General of Canada [AGC], brings this motion to strike the Applicant's Notice of Application for Judicial Review [NAJR] under Rule 369 of the Federal Courts Rules, SOR/98-106 [Rules]. The Applicant filed his NAJR in relation to a decision of the Correctional Service Canada [CSC] to reclassify his Offender Security Level from minimum-security to medium-security and to transfer him to a different institution.

[2] The Respondent argues that the NAJR ought to be struck because (a) it is premature because the Applicant has failed to exhaust a grievance process in relation to his reclassification; (b) it is an abuse of process; and (c) the decision subject to the NAJR is moot.

[3] Having considered the Applicant and the Respondent's motion records and the applicable law, Mr. Cook's NAJR will be struck because the NAJR is premature.

II. Background Facts [4] Mr. Cook [Applicant] is presently on day parole from the Saskatchewan Penitentiary Day Parole Unit, operated by CSC and located in Prince Albert, Saskatchewan.

[5] On May 15, 2025, the Applicant was involuntarily transferred from the Willow Cree Healing Lodge to the Saskatchewan Penitentiary Medium Security Unit following a decision by CSC to reclassify his Offender Security Level from minimum-security to medium-security [May 15 Decision].

[6] As a result, the Applicant was denied for both day parole and full parole, because the community support necessary to obtain parole had been rescinded due to the May 15 Decision.

[7] The Applicant was eventually granted day parole but denied full parole because there had been no opportunities for the Applicant to demonstrate good behaviour in the community, due to the revocation of his community support following the May 15 Decision.

[8] The Applicant challenged the May 15 Decision by filing multiple grievances. Two grievances, numbers "53124" and "53125", were filed by the Applicant on June 12, 2025. One focused on the security reclassification portion of the May 15 Decision, while the other focused on the transfer portion of the May 15 Decision.

[9] As both grievances challenged the same May 15 Decision, CSC issued one response for both grievances, on July 24, 2025.

[10] No notice of application for judicial review regarding the CSC July 24, 2025, decision was filed within 30 days, as required under subsection 18.1(2) of the Federal Courts Act, RSC 1985, c F-7 [Federal Courts Act].

- [11] On August 25, 2025, the Applicant brought a third grievance, number “53845”, still relating to similar issues on his security reclassification from minimum-security to medium-security resulting from the May 15 Decision.
- [12] In the meantime, the Applicant brought a Habeas Corpus application before the Saskatchewan Court of King’s Bench.
- [13] On September 5, 2025, after a Habeas Corpus application was filed, but before it could be heard in the Saskatchewan Court of King’s Bench, the Applicant was moved to a minimum-security facility.
- [14] On September 16, 2025, the Honourable Justice J.P. Morrall of the Saskatchewan Court of King’s Bench held that since the Applicant had been returned to a minimum-security unit, he had to dismiss the Habeas Corpus application and indicated that “what the Applicant requires is judicial review” (See KBG-PA-00106-2025 Cody Cook v Attorney General of Canada).
- [15] On October 23, 2025, this Court issued an Order granting an extension of time for the Applicant to file a NAJR, relating to the May 15 Decision and/or the CSC grievance decision of July 24, 2025.
- [16] On November 7, 2025, the Applicant filed his NAJR, seeking judicial review of “[t]he decision of CSC, communicated to the Applicant on May 15, 2025, to reclassify that Applicant’s Offender Security Level from minimum-security to medium-security [...]”. In other words, the NAJR was filed in relation to the May 15 Decision. No mention is made of the CSC grievance decision of July 24, 2025.
- [17] On November 12, 2025, the Parole Board of Canada [PBC] made a decision granting the Applicant day parole and denying him full parole. The reason provided for denying full parole was that the Applicant had “not yet demonstrated reliability under community supervision over a sustained period”.
- [18] On December 1, 2025, CSC deferred its decision on the August 25, 2025, grievance number “53845”, as a result of the Applicant’s filing of his NAJR on November 7, 2025.

III. Issues [19] The only issue on this motion is whether the Applicant’s NAJR should be struck.

IV. Analysis [20] The Rules do not explicitly provide a basis for striking a notice of application. However, the Court’s plenary jurisdiction to restrain the misuse or abuse of the Court’s processes provides a basis for a motion to strike a NAJR (*David Bull Laboratories (Canada) Inc. v Pharmacia Inc. (CA)*, [1995] 1 FC 588 at p 600; see also *Canada (National Revenue) v RBC Life Insurance Company*, 2013 FCA 50 at paras 33-36; *Wood v Canada (Attorney General)*, 2023 FC 224 at para 4; *Manitoba Métis Federation v Ottawa MacDonald-Cartier International Airport Authority*, 2025 FC 1587 at para 4). Moreover, applications for judicial review must be brought quickly and must proceed “without delay” and “in a summary way” (subsection 18.1(2) and section 18.4 of the *Federal Courts Act*).

- [21] A notice of application can be struck when it is “so clearly improper as to be bereft of any possibility of success. [...] There must be a “show stopper” 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]; Bernard v Canada (Attorney General), 2019 FCA 144 at para 33; Iris Technologies Inc. v Canada, 2024 SCC 24 at para 26 [Iris]). The Court’s authority to do so comes from its plenary jurisdiction to restrain the misuse or abuse of the Court’s processes (JP Morgan at para 48).
- [22] On a motion to strike a NAJR, a court must always determine the essential nature or true character of the claim, which must be determined on a realistic appreciation of the practical result sought by the claimant. The pleadings must be read “holistically and practically”, without “fastening onto matters of form” (Iris at paras 26, 91-93; JP Morgan at paras 49-50). The Court should assume that the facts pleaded in the NAJR are true and the NAJR should be read generously with allowance for inadequacies due to drafting deficiencies (Wenham v Canada (Attorney General), 2018 FCA 199 at paras 33-34 [Wenham]).
- [23] In Wenham, the Federal Court of Appeal provided for situations where a NAJR may be struck because it is doomed to fail. They are as follows:
- [36] An application can be doomed to fail at any of the three stages:
- I. Preliminary objections. An application not authorized under the Federal Courts Act, R.S.C., 1985, c. F-7 or not aimed at public law matters may be quashed at the outset: JP Morgan at para. 68; Highwood Congregation of Jehovah’s Witnesses (Judicial Committee) v. Wall, 2018 SCC 26; Air Canada v. Toronto Port Authority, 2011 FCA 347, [2013] 3 F.C.R. 605. Applications not brought on a timely basis may be barred: section 18.1(2) of the Federal Courts Act. Judicial reviews that are not justiciable may also be barred: Hupacasath First Nation v. Canada (Foreign Affairs and International Trade Canada), 2015 FCA 4, 379 D.L.R. (4th) 737. Other possible bars include res judicata, issue estoppel and abuse of process (Danyluk v. Ainsworth Technologies Inc., 2001 SCC 44, [2001] 2 S.C.R. 460; Toronto (City) v. C.U.P.E., Local 79, 2003 SCC 63, [2003] 3 S.C.R. 77), the existence of another available and adequate forum for relief (prematurity) (Canada (Border Services Agency) v. C.B. Powell Limited, 2010 FCA 61, [2011] 2 F.C.R. 332; JP Morgan at paras. 81-90) and mootness (Borowski v. Canada (Attorney General), 1989 CanLII 123 (SCC), [1989] 1 S.C.R. 342).
- II. The merits of the review. Administrative decisions may suffer from substantive defects, procedural defects or both. Substantive defects are evaluated using the methodology in Dunsmuir v. New Brunswick, 2008 SCC 9, [2008] 1 S.C.R. 190; procedural defects are evaluated largely by applying the factors in Baker v. Canada (Minister of Citizenship and Immigration), 1999 CanLII 699 (SCC), [1999] 2 S.C.R. 817, 174 D.L.R. (4th) 193. In certain circumstances, the application is doomed to fail at this stage right at the outset. For example, an application based on procedural defects that have been waived has no chance of success: Irving Shipbuilding Inc. v. Canada (Attorney General), 2009 FCA 116 (CanLII), [2010] 2 F.C.R. 488, 314 D.L.R. (4th) 340.

III. Relief. In some cases, the relief sought is not available in law (JP Morgan at paras. 92-94) and so the application can be quashed in whole or in part on that basis.

(Wenham at para 36 [emphasis added])

A. The Application is not moot [24] The AGC submits that because the Applicant has now been reclassified as minimum-security and released on day parole, the issue is moot because the Applicant no longer suffers any impact from the Decision.

[25] I am not prepared, on the evidence adduced on this motion, to rule that the issue is moot. On November 12, 2025, the PBC granted the Applicant day parole but denied him full parole on the basis that he had “not yet demonstrated reliability under community supervision over a sustained period”. However, the reason why the Applicant may have been unable to discharge his burden could be because of the May 15 Decision. The evidence appears to establish that the May 15 Decision on the Applicant’s reclassification had an impact on his parole opportunities. Had the May 15 Decision not been made, the Applicant could potentially have been able to demonstrate sufficient “reliability under community supervision” to obtain full parole. In that sense, the Applicant potentially still suffers an impact from the May 15 Decision.

[26] Certainly, interpreted “holistically and practically”, the NAJR is sufficiently detailed to establish a link between the May 15 Decision and the Applicant’s failure to obtain full parole. Since there remains a live controversy between the parties, being the tangible negative impact of the May 15 Decision on the Applicant’s parole opportunities, Mr. Cook’s NAJR is not moot.

B. The Application is premature [27] The AGC submits that if the Applicant’s NAJR is not moot, it must then be struck because it is premature. Indeed, parties can proceed to the courts only after all adequate remedial recourses in the administrative process have been exhausted, as the courts should not interfere with an ongoing administrative process until it is completed, or until the available, effective remedies are exhausted (*Canada (Border Services Agency) v C.B. Powell Limited*, 2010 FCA 61 at paras 30-33 [Powell]; *Blair v Canada (Attorney General)*, 2022 FC 957 at paras 37-54 [Blair]).

[28] In this case, on August 25, 2025, and after the CSC July 24, 2025, decision on his initial two grievances, the Applicant brought the third grievance number “53845”. It is not contested that the third grievance number “53845” relates to the same events leading to the May 15 Decision. The Applicant again contests the reclassification of his Offender Security Level from minimum-security to medium-security.

[29] The CSC accepted grievance number “53845” for filing. At no time CSC took the position that grievance number “53845” was an abuse of process and that it would not entertain it.

[30] Subsequently, on November 7, 2025, the Applicant filed his NAJR.

- [31] Pursuant to subsection 81(1) of the Corrections and Conditional Release Regulations, SOR/92-620 [CCRR], grievances are deferred when an individual subject to the jurisdiction of CSC decides to pursue a legal remedy instead of a grievance, and that deferral will continue until a decision on the alternate remedy is rendered or the offender decides to abandon the alternate remedy.
- [32] As a result, on December 1, 2025, the Applicant's third grievance number "53845" made on August 25, 2025 (before the filing of this NAJR) and relating to the May 15 Decision was deferred by CSC, pursuant to subsection 81(1) of the CCRR, pending the adjudication of this NAJR.
- [33] It follows that, after the CSC decision dated July 24, 2025, on his initial two grievances, the Applicant chose to pursue the third grievance number "53845" on August 25, 2025, instead of immediately seeking judicial review of the CSC decision issued on July 24, 2025.
- [34] Later, on October 10, 2025, the Applicant may have changed his mind and sought an extension of time to file a NAJR relating to the May 15 Decision (which was granted on October 23, 2025); and the NAJR was issued on November 7, 2025.
- [35] However, having elected to pursue another round of grievance which was accepted for filing by the CSC on August 25, 2025, the Applicant ought to be compelled to follow through on the proceeding he initiated and precluded from seeking judicial review of the May 15 Decision before this Court, until his other recourse is exhausted.
- [36] Having already filed a third grievance, the second and parallel recourse chosen by the Applicant (the filing of his NAJR on November 7, 2025) was not available to him until he had exhausted other available recourse (his third grievance). In other words, the Applicant could not bring his NAJR on November 7, 2025, given that he had already filed a third grievance, until that third grievance process was completed.
- [37] As stated, subsection 81(1) of the CCRR requires that any grievance be deferred pending an alternative remedy sought by an applicant. That is the reason why grievance number "53845" has not yet been adjudicated. But if the Applicant's NAJR is struck, then his grievance number "53845" is revived and may be reviewed pursuant to subsection 81(1) of the CCRR.
- [38] As a result, the Applicant still has a recourse available to him through the grievance procedure and ought not to seek judicial review of the May 15 Decision while that adequate alternative remedy remains available (*Giesbrecht v Canada*, 1998 CanLII 7905 (FC) at para 14; *Blair* at paras 44-54; *Powell* at paras 30-33; *Nome v Canada (Attorney General)*, 2016 FC 187 at para 19; *Thompson v Canada (Correctional Service)*, 2018 FC 40 at paras 14-17; *MacInnes v Mountain Institution*, 2014 FC 212 at para 17; *Cobb* at para 48).

[39] The NAJR is therefore premature and thus struck. The Applicant must avail himself of the grievance process at CSC and must have his grievance relating to the May 15 Decision finally determined. Following the CSC decision on the third grievance, the Applicant may then seek judicial review before this Court in relation to the May 15 Decision.

C. Evidence [40] Subject to limited exceptions, affidavits are not admissible in support of motions to strike applications for judicial review (JP Morgan at paras 51-52).

[41] However, affidavit evidence is admissible to introduce evidence in order to make arguments about the mootness of the proceedings, or on its prematurity on the ground that an alternative remedy exists in the administrative process (*Picard v Canada (Attorney General)*, 2019 CanLII 97266 (FC) at paras 17–18; *Tait v Canada (Royal Canadian Mounted Police)*, 2024 FC 217 at para 27; *Windsor (City) v Canadian Transit Co*, 2016 SCC 54 at para 24; *Cobb v Canada (Attorney General)*, 2025 FC 74 at para 4 [Cobb]). Affidavit evidence merely appending documents referenced in a notice of application is also permissible (JP Morgan at para 54; Blair at paras 11-12, 14).

[42] In this case, both parties have adduced evidence that is inconsistent with those rules.

[43] As a result, I have only considered the relevant exhibits appended to the affidavit of R. Barton. Those are exhibits C, D, E, F and G (the three grievances filed by the Applicant as well as the decision of the CSC dated July 24, 2025, on the initial two grievances, and the decision to defer the third grievance as a result of subsection 81(1) of the CCRR) of the affidavit of R. Barton. I have also considered the affidavits of R. Barton and Mr. Cook in relation to the issue of mootness.

V. Conclusion [44] The AGC's motion to strike the Applicant's NAJR is granted, without costs.

JUDGMENT in T-4571-25

THIS COURT'S JUDGMENT is that:

The motion to strike the Applicant's notice of application is struck, without costs.

"Guy Régimbald"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:

T-4571-25

STYLE OF CAUSE:

CODY COOK v ATTORNEY GENERAL OF CANADA

MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULES 81(1) AND 369
OF THE FEDERAL COURTS RULES

ORDER AND REASONS:

RÉGIMBALD, J.

DATED:

MARCH 31, 2026

WRITTEN SUBMISSIONS BY:

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