

CANADA / JUDGMENT

Scherf v. Canada (Attorney General)

2026 FC 52

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T-1421-25 Citation: 2026 FC 52 Calgary, Alberta, January 14, 2026 PRESENT: Mr. Justice Brouwer
BETWEEN: MARINA SCHERF Applicant and ATTORNEY GENERAL OF CANADA Respondent
JUDGMENT AND REASONS

- [1] The Applicant, Marina Scherf, is an Officer with the Canadian Armed Forces [CAF]. She was removed from the Air Combat Systems Officer training course in December 2022 for performance-related reasons that she maintains were unreasonable. The Applicant grieved her removal from the course, but the grievance was dismissed. She seeks judicial review of the grievance decision. For the reasons set out below, I agree with the Applicant that the decision dismissing her grievance was unreasonable, in that it falls short of the requirement of justification. I will therefore grant her judicial review.
- I. Background [2] The Applicant joined the CAF in January 2020. After completing basic training and receiving the rank of Second Lieutenant, the Applicant began training to become an Air Combat Systems Officer with CAF Squadron 402 in May 2022. Although she did well during the first six months of the course, on November 18, 2022, she received an Unsatisfactory Progress Report [UPR] after receiving an unsatisfactory assessment on a flight test, followed by two more UPRs on November 23 and December 2, 2022, respectively. As a result of the three negative reports, a Progress Review Board [PRB] was convened to assess her participation in the course. Following a review of the file and interviews with the course director, acting director, testing officers and a standards monitor, the PRB recommended that the Applicant be required to redo the training course from the beginning (a process referred to as being “re-coursed”).
- [3] The PRB recommendation, which was not binding, was provided to the Applicant’s Commanding Officer for decision. After a review of the PRB file and two meetings with the Applicant, the Commanding Officer chose instead to cease the Applicant’s training.
- [4] The Applicant grieved her Commanding Officer’s decision to cease her training, using the CAF’s internal grievance mechanism (National Defence Act, RSC 1985, c N-5, s 29 [NDA]). She challenged the accuracy and reasonableness of the UPR findings as well as the fairness of the process that had led to her being removed from the training program.

- [5] Her grievance was dismissed at first instance by an Officer designated as the Initial Authority [IA], so she appealed to the Final Authority, a delegate of the Chief of Defence Staff. In support of her appeal, the Applicant provided detailed written representations challenging the IA's determination, outlining errors in its analysis, and providing further factual context and supporting documentation. The Final Authority adopted the reasons of the IA and dismissed the grievance. The Applicant now seeks judicial review of the Final Authority's decision. II. Issues [6] The Applicant alleges that the decision of the Final Authority was both unreasonable and procedurally unfair. She asserts that the Final Authority decision unreasonably (a) fails to engage with the issues she raised in her appeal submissions and (b) upholds an erroneous assessment of her training performance, procedural irregularities in training delivery, and systemic instructional shortcomings that impacted her performance. She also submits that the decision was reached in a procedurally unfair manner.
- [7] The Respondent denies any error or unfairness.
- [8] A reasonable decision is one "one that is based on an internally coherent and rational chain of analysis and that is justified in relation to the facts and law that constrain the decision maker" (Canada (Minister of Citizenship and Immigration) v Vavilov, 2019 SCC 65 at para 85 [Vavilov]). While reviewing Courts are to accord deference to the written reasons provided by administrative decision makers, this "is not a 'rubber-stamping' process or a means of sheltering administrative decision makers from accountability" (Mason v Canada (Citizenship and Immigration), 2023 SCC 21 at para 63 [Mason], citing Vavilov at para 13). Instead, the Supreme Court of Canada in Mason explained "it is "a robust form of review" (para. 13; see also paras 12, 67 and 138), one that highlights "the need to develop and strengthen a culture of justification in administrative decision making" (para. 2)" (Mason at para 63, citing Vavilov). There are two types or categories of error that generally indicate that a decision is unreasonable. One is a "failure of rationality" in the reasoning process; the other is a "failure of justification" in light of the relevant factual and legal constraints (Vavilov at para 101; Mason at para 64).
- [9] The third issue raised by the Applicant, procedural fairness, is not one in respect of which this Court applies deference to the administrative tribunal. Instead, the Court asks whether the process was fair, having regard to all the circumstances (Canadian Pacific Railway Company v Canada (Attorney General), 2018 FCA 69 at para 54). III. Analysis [10] The Final Authority's decision consists of three short sentences: Decision. After my review of your complete grievance file and your representations dated 18 June 2024, I agree with the decision rendered by the IA and accept their reasoning as my own. The IA provided significant detail in their assessment that the result of the progress review board and the decision of the [Commanding Officer of] 402 Squadron to cease training was acceptable. Consequently, I am not prepared to grant the redress you are seeking.

- [11] There can be no serious dispute that the Final Authority’s “reasoning” – if this can be characterized as reasoning – is brief. However, the Respondent asserts that it is adequate because the Final Authority adopted the much more detailed analysis of the IA as its own, and it was entitled to do so. According to the Respondent, when assessing the reasonableness of this decision the Court should take into account “the history of backlogs for grievances before the Final Authority and its exacerbation since the onset of the COVID-19 pandemic,” noting that according to the Respondent’s witness, Major Vanessa Villeneuve, in order to address this backlog the Canadian Forces Grievance Authority has been encouraging the Final Authority to “use the drafting technique of adopting, in whole or in part, the reasoning of the IA...to explain their decision.” Where the Final Authority agrees with the IA’s decision, finds it was made reasonably and fairly, and is not swayed by the submissions of the grievor, “adoption of reasons streamlines the decision-making process while maintaining fairness.” Maj. Villeneuve asserts that “[t]his drafting technique was applied in the Final Authority’s decision of March 28, 2025, in relation to the Applicant’s grievance.” The Respondent submits that this “transformation initiative,” along with other factors, has yielded “measurable results” in terms of efficiency, effectively quadrupling the output of the Final Authority in the first half of 2025 as compared to the two previous years.
- [12] The Applicant does not challenge the Final Authority’s ability to adopt the IA’s reasoning as its own; she asserts, however, that doing so did not absolve the Final Authority of the duty to explain why it was not persuaded by her post-IA decision appeal submissions.
- [13] I agree with the Applicant.
- [14] I acknowledge that reasonableness review takes its colour from context (Vavilov at para 89), and that this context includes, inter alia, the Final Authority’s mandate to “deal with all matters as informally and expeditiously as the circumstances and the considerations of fairness permit” (NDA, s 29.11) as well as the urgent need to reduce the backlog of grievances; however, to accept the Final Authority’s decision as reasonable would be to strip reasonableness review of all meaning. This was, after all, a de novo appeal, and the outcome has had a significant effect on the Applicant’s career. These factors, too, are part of the context informing reasonableness review.
- [15] The Supreme Court of Canada was clear in *Mason* that in the culture of justification, reasons matter:
- [74] An administrative decision maker’s reasons must “meaningfully account for the central issues and concerns raised by the parties” (para. 127). Reasons must be “responsive” to the parties’ submissions, because reasons are the “primary mechanism by which decision makers demonstrate that they have actually listened to the parties” (para. 127 (emphasis in original)). Although an administrative decision does not have to “respond to every argument or line of possible analysis” raised by the parties, “a decision maker’s failure to meaningfully grapple with key issues or central arguments raised by the parties may call into question

whether the decision maker was actually alert and sensitive to the matter before it” (para. 128).

- [16] It is impossible to read the Final Authority’s single-paragraph decision and conclude that the Final Authority “actually listened” to the Applicant. While it may or may not have been reasonable for the Final Authority to simply adopt the IA’s reasoning as its own and to reject the appeal had the Applicant not made any submissions, that is not the case before me. Here, the Applicant provided 13 single-spaced pages of detailed representations challenging both her removal from the training course and the IA’s grievance determination. While it was open to the Final Authority to find her representations unpersuasive, it was not reasonable to simply decline to engage with them at all. The resulting decision falls short of the requirements of justification, intelligibility and transparency, and must be set aside.
- [17] Having determined that the decision is unreasonable on this basis, there is no need to determine whether the decision also bears other markers of unreasonableness as asserted by the Applicant. The matter will have to be redetermined in any event.
- [18] As for the Applicant’s claim that the Final Authority’s failure to consider her submissions was procedurally unfair, I agree with the Respondent that the question is more appropriately assessed within the rubric of reasonableness review based on the facts of the case, and I have done so above.
- [19] Finally, the Respondent requests that this Court amend the style of cause to remove the Minister of National Defence as a Respondent. The Applicant does not object and I agree it is appropriate to do so.
- [20] During the hearing the Applicant, who was unrepresented, advised that she was not seeking costs. Accordingly, no costs will be ordered. JUDGMENT in T-1421-25 THIS COURT’S JUDGMENT is that: The application is granted. The matter shall be remitted for redetermination by a differently constituted tribunal. The Applicant shall be given a reasonable opportunity to make updated submissions as part of that redetermination. The style of cause is amended with immediate effect to remove the Minister of National Defence as a respondent. "Andrew J. Brouwer" Judge FEDERAL COURT SOLICITORS OF RECORD Docket: T-1421-25 STYLE OF CAUSE: MARINA SCHERF v ATTORNEY GENERAL OF CANADA PLACE OF HEARING: VIDEOCONFERENCE DATE OF HEARING: DECEMBER 2, 2025 JUDGMENT AND REASONS: BROUWER j. DATED: January 14, 2026 APPEARANCES: MARINA SCHERF FOR THE APPLICANT (SELF-REPRESENTED) ALEX DALCOURT For The Respondent SOLICITORS OF RECORD: Alex Dalcourt Attorney General of Canada Ottawa, Ontario For The Respondent

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