Federal Court Cour fédérale

Date: 20250728

Docket: T-2212-24

Citation: 2025 FC 1337

Ottawa, Ontario, July 28, 2025

PRESENT: The Honourable Madam Justice Ngo

BETWEEN:

SERGE TETREAULT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Context

[1] The Applicant, Lieutenant-Commander Tetreault [Applicant], is a serving member of the Canadian Armed Forces [CAF] who alleges that he "felt coerced into acquiescing to a vaccination that he did not want" during the COVID-19 pandemic because he "feared losing his employment and income." He states that this coercion violated his rights under the *Canadian*

Charter of Rights and Freedoms, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*].

[2] The Applicant challenged a CAF directive that required members of the CAF to be vaccinated. This grievance led to a final determination by the Chief of the Defence Staff [CDS]. He seeks judicial review from the CDS' decision that concluded that the vaccination policy did not engage the Applicant's rights under section 7 of the *Charter* [Decision].

[3] Based on the proper scope of the issues on judicial review, I have concluded that this application is moot. Given the well-established law on the discretion to hear cases notwithstanding a finding that they are moot, the Court declines to hear this application.

II. Pertinent Facts and Decision Under Review

[4] The Applicant is a serving member in the Regular Force within the CAF. Four CAF COVID-19 Vaccination directives were issued over the course of the pandemic:

1. CDS Directive on CAF COVID-19 Vaccination was issued on October 8, 2021, which required all CAF members to be vaccinated, and indicated that members who were unwilling to comply could be subject to remedial measures [Directive #1].

2. CDS Directive 002 on CAF COVID-19 Vaccination – Implementation of Accommodations and Administrative Action was issued on November 3, 2021, and required commanding officers to consider the full range of administrative action for CAF members that failed to comply with the attestation requirement. CDS Directive 002 on CAF COVID-19 Vaccination – Implementation of Accommodations and Administrative Action – Amendment 1 was issued on

December 4, 2021. It indicated that unvaccinated CAF members could elect to voluntarily release or transfer to the supplemental reserve [collectively, Directive #2 and its amendment].

3. CDS Directive 003 on CAF COVID-19 Vaccination for Operations and Readiness was issued on October 11, 2022, and suspended all of the previous directives. This directive requires vaccination for certain categories of personnel but does not require vaccination for all CAF members. It also does not apply retroactively [Directive #3].

[Collectively "Directives"]

[5] The Applicant received a COVID-19 vaccination following the issuance of Directive #1. He claims that he was vaccinated against his will.

[6] On November 17, 2021, the Applicant initiated the CAF grievance process by filing a redress of grievances with his chain of command. As redress, the Applicant requested in his grievance that "the Federal Court review the constitutionality and legality of the CDS Directives on COVID-19 vaccination." He also requested that "the CDS Directives be rescinded, that the CDS apologizes for issuing the Directives that violated the *Charter* and that an appropriate redress be provided for vaccinations that cannot be undone." The Applicant resubmitted the same grievance on December 11, 2021. This second submission was registered, reviewed and decided.

[7] The Applicant's grievance was mandatorily referred to an independent body, the Military Grievances External Review Committee [MGERC]. The issue was defined before the MGERC

as whether the Applicant "was aggrieved by the CAF COVID-19 vaccination policy and whether this policy infringes on protected rights under the *Charter*."

[8] On January 30, 2023, the MGERC findings and recommendations were provided to the Applicant. The MGERC advised the Applicant that its findings and recommendations are not a decision, and that the CDS as a final authority, could accept them, or reject them, in whole or in part.

[9] The MGERC concluded that the CAF vaccination policy infringed the Applicant's section 7 *Charter* rights, and that the policy was not minimally impairing. It could not be saved under section 1 of the *Charter*. Although Directive #1 and Directive #2 and its amendment were superseded and suspended by Directive #3, the MGERC determined that the issues raised remained relevant given that Directive #3 is not retroactive in its application.

[10] The MGERC findings and recommendations were considered by the CDS, who outlined the "matter grieved" as the Applicant's assertion that the CAF Vaccination Directives coerced him into receiving a vaccination that he did not want, in violation of his rights protected under section 7 of the *Charter*, and that he followed the directive out of fear of losing his employment and income. The CDS noted that the Applicant was informed that the MGERC findings and recommendations were submitted to the CDS so that it could render a decision. The Applicant elected not to provide further submissions and requested that his grievance be submitted to the CDS without further delay.

[11] On June 25, 2024, the CDS found that there was no breach of the Applicant's section 7 rights under the *Charter*, or alternatively that there was no breach of section 1 of the *Charter*, and accordingly, that the Applicant was not aggrieved. The CDS disagreed with the MGERC findings and recommendations, set out the reasons why the Applicant was not aggrieved, and explained how the CDS was not prepared to grant the redress sought by the Applicant. This Decision by the CDS is the subject of this judicial review.

III. Preliminary Issues and Objections

[12] The Respondent raised several substantive preliminary objections arising from the Applicant's Record and submissions on judicial review. In sum, the Respondent alleges that the Applicant seeks to improperly introduce new evidence and new issues that were not before the decision-maker, and seeks to tender inadmissible evidence, among other things. These objections go to the scope of what is properly before this Court on judicial review.

[13] On judicial review, the Applicant challenged the CDS' Decision on the basis that his rights under section 7 of the *Charter* were engaged with the requirement imposed by Directive #1. The Applicant further argued in his Memorandum of Fact and Law that the CDS did not have the jurisdiction to make the Decision under review; that the CDS was in conflict of interest or biased when reviewing grievances because of its role as the final authority to one of its own Directives; that Directive #1 discriminated against the Applicant, forcing him to receive a vaccination; and that he did not provide informed consent to receive the vaccine under these circumstances.

[14] I now turn to the objections.

A. *The affidavit of an employee of Applicant counsel's law firm is not admissible*

[15] The Applicant included in his Applicant's Record, an affidavit of Natasha Lis sworn on December 2, 2024 [Lis Affidavit]. Ms. Lis states that she is an employee with Valour Legal Action Centre, the Applicant counsel's law firm and a retired member of the CAF.

[16] The Respondent objects to the admission in evidence of the Lis Affidavit as it is improper for numerous reasons. The Respondent states that the Lis Affidavit violates Rule 306 of the *Federal Courts Rules,* SOR/98-106 [*Rules*] because the Applicant did not provide the Affidavit within 30 days of the issuance of the Notice of Application. In fact, the 30-day delay had well been exceeded since the Affidavit was sworn on December 2, 2024, and the Notice of Application was filed on August 21, 2024. Additionally, the Respondent argues that the Applicant cannot refer to exhibits filed in a different legal action, that are irrelevant and are not properly before the Court through the Lis Affidavit.

[17] The Respondent also notes that the Lis Affidavit violates Rule 81(1) since it is not confined to facts that are within the deponent's personal knowledge. The exhibits to the Lis Affidavit constitute hearsay evidence since Ms. Lis does not and cannot swear to the truth of the content of those documents. Further, the Respondent alleges that the Lis Affidavit contravenes Rule 82 since the Applicant submitted the Lis Affidavit and presented arguments on the basis of this affidavit without first requesting and obtaining leave from the Court.

[18] I agree with the Respondent's objections with respect to the Lis Affidavit.

[19] The Federal Court of Appeal has confirmed that members or employees of counsel's law firm should not provide evidence in respect of contentious matters. This applies both to opinion evidence, and factual non-opinion evidence given on matters of substance, particularly going to the heart of the issues and beyond the "non-controversial" (*Toys* "R" *Us (Canada) Ltd v Herbs* "R" *Us Wellness Society*, 2020 FC 682 at paras 10-11 citing *Cross-Canada Auto Body Supply (Windsor) Ltd v Hyundai Auto Canada*, 2006 FCA 133 at paras 4-5, other citations omitted).

[20] Paragraph one of the Lis Affidavit provides background information about Ms. Lis and her position.

[21] Paragraph two of the Lis Affidavit states: "[i]n relation to a separate legal action brought by Valour Legal Action Centre (Federal Court File Number T-11296-23), the Manager Professional Policies – Grievances of the Canadian Forces Grievance Authority, Ann-Marie De Arauja Viana, provided an affidavit, attached as Exhibit "A," in support of the Attorney General of Canada's position." The affidavit of Ms. Ann-Marie De Arauja Viana [Manager] was attached as Exhibit A to the Lis Affidavit.

[22] The Lis Affidavit continues to state that: "the Applicant was not a party to that action; however, the decision rendered by the Chief of Defence Staff, General Wayne Eyre in response to the Applicant's grievance was attached to the affidavit (Exhibit "A") and referenced the Attorney General's written representations. At paragraph 20 and 21 of the affidavit (Exhibit

"A"), Ann-Marie De Arauja Viana indicated the CAF's expectation that the decision would be used as a template to respond to similar grievances."

[23] Upon review of the Manager's affidavit, no such statement was found. This type of assertion by an employee with the Applicant's law firm is what the case law cautions against. The exhibits referred to in the Manager's affidavit as stated in the Lis Affidavit were also not provided.

[24] Furthermore, it was not clear how the Manager's affidavit was relevant to the Applicant's judicial review. The Manager's affidavit was submitted in a judicial review that involves a different member of the CAF in another Federal Court file.

[25] Thus, paragraph two of the Lis Affidavit and the Manager's affidavit attached as an exhibit are improper and are not admissible.

[26] Paragraph three of the Lis Affidavit states that "in the course of my work, my colleagues or I have requested documents" through the *Access to Information Act*, RSC, 1985, c A-1 [ATIP Requests]. Ms. Lis then lists and appends as exhibits seven ATIP responses, with documents identified as received from the Department of National Defence/CAF. The Applicant contends that these documents were before the CDS as the decision-maker.

[27] It is not clear which documents Ms. Lis personally received through the ATIP Requests. I also find that the ATIP Requests documents in and of themselves cannot confirm what the CDS

would have had before him when he considered the Applicant's grievance, nor can Ms. Lis personally affirm this was within her personal knowledge. These documents therefore constitute inadmissible hearsay evidence and are not admissible.

[28] As such, I find that the Lis Affidavit contravenes Rules 81(1) and 82, as correctly described in the Respondent's submissions.

[29] Additionally, the Applicant never requested a certified tribunal record [CTR] pursuant to Rule 317. The absence of a CTR is not fatal to an application for judicial review. However, it does potentially make it more challenging for the reviewing court to develop an understanding of the decision-maker's reasoning process and conclusions because factors that are often determinative – the evidence filed, and the submissions made – might not be made available to the reviewing court (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 at paras 125-128 [*Vavilov*]).

[30] In this case, the Lis Affidavit cannot be used as a replacement or substitute for the CTR. There is no evidence to confirm that the CDS had the documents listed in the Lis Affidavit before him.

[31] Finally, in response to the Respondent's objections, the Applicant argued that the Lis Affidavit should be admissible under section 30(1) of the *Canada Evidence Act*, RSC, 1985, c C-5 [*Canada Evidence Act*] as "documents made in the normal course of business."

[32] I note that when the Applicant relies on subsection 30(1) of the *Canada Evidence Act*, he is asserting that these documents are records made in the CDS' usual and ordinary course of business (i.e., business records). However, this assertion was unsupported by any evidence and there was no explanation provided to the Court on the circumstances in which the records were made. As such, this ground for admissibility is rejected. The Applicant's reliance on the *Canada Evidence Act* to justify the inclusion of the exhibits in the Lis Affidavit is misplaced.

[33] Given the above, I conclude that the Lis Affidavit and the exhibits appended to it are not admissible and will not be considered.

B. *The Court cannot consider the additional new evidence, new issues and new arguments submitted by the Applicant and raised for the first time on judicial review*

[34] The Respondent objected to the inclusion of thirty-two references to various websites, reports, opinions and news articles [secondary sources] listed after the Applicant's affidavit but not included as a part of his affidavit. These secondary sources can be found in six "appendices." The Respondent alleges that these secondary sources are improper because they were not before the decision-maker and are not admissible as they were not attached to any affidavit. The Respondent underlined that the Applicant's counsel recently attempted to do the same thing, by including secondary sources to a motion record, styled as "appendices", and not attached to affidavits. In that case, the Court found that these secondary sources were not properly before the Court pursuant to the *Rules* and were not considered (citing *Qualizza v Canada*, 2024 FC 1801).

[35] In the absence of being appended to an affidavit, the list of secondary sources are simply free-floating documents. They are not properly before me as evidence, and I will not consider them.

[36] The Respondent also objected to the new issues and arguments that have been raised for the first time on judicial review in the Applicant's Memorandum of Fact and Law. In particular, the Applicant's allegations on discrimination, on the CDS' conflict of interest/bias and on the CDS' jurisdiction to reach the decision under review are found in the Applicant's Memorandum of Fact and Law. However, these new issues were not plead in the Notice of Application, nor were they presented as arguments before the CDS in the grievance process. As such, the Respondent submits that these new issues are improperly raised and should not be considered by the Court on judicial review.

[37] Of the new issues identified by the Respondent, the term "informed consent" was mentioned in the Notice of Application. However, it was within the text of declaratory relief sought by the Applicant worded as such: "A Declaration that the CAF COVID-19 vaccination policy, including its coercive implementation threatening employment and income, was in violation of the principle of informed consent and was unlawful under statutory law and regulations governing the CAF." "Informed consent" was not articulated under the grounds for judicial review in the Notice of Application nor was it raised during the CAF grievance process.

[38] The other new issues were not mentioned nor raised in the Notice of Application or the grievance process.

[39] The Applicant contends that even if he did not explicitly raise these issues in the CAF grievance process, they should still be considered on judicial review. The Applicant states that the CDS should have been aware of these issues as they were interconnected with his *Charter* challenge and the CDS should have considered them. He should not now be restricted from presenting these issues to the Court.

[40] With respect, I cannot agree with the Applicant's arguments. Other than the corollary issue of section 1 of the *Charter* in the analysis of a breach of section 7 of the *Charter*, the new issues and arguments presented to the Court were not raised or argued by the Applicant during the grievance process. In addition, the new issues were not plead in the Notice of Application. They are, therefore, also not properly before the Court.

[41] First, Rule 301 requires that an applicant set out in their Notice of Application a complete and concise statement of the grounds they intend to argue. The Federal Court of Appeal has held that Rule 301 is a mandatory provision with limited exceptions. It ensures that a respondent receives adequate notice of the case being brought against them so that they can meaningfully respond (*Komleva v Canada (Attorney General)*, 2024 FC 1562 at para 21 citing *Canada (Attorney General) v Iris Technologies Inc*, 2021 FCA 244 at paras 38-42).

[42] In the Applicant's Notice of Application, the Applicant sought the following remedy:

> a) "A writ of *certiorari*, ordering that the CDS' Decision dated 25 June 2024, be reviewed and set aside, or otherwise modified as this Honourable Court deems just and proper;
>
> b) A Declaration that the CAF COVID-19 vaccination policy, the associated CDS directives, and the implementation of

the policy were unconstitutional and violated section 7 of the *Charter;*

c) A Declaration that the CAF COVID-19 vaccination policy, including its coercive implementation threatening employment and income, was in violation of the principle of informed consent and was unlawful under statutory law and regulations governing the CAF;

d) An injunction to halt the enforcement of the CAF's COVID-19 vaccination policy or any administrative and disciplinary actions resulting from non-compliance;

e) Damages pursuant to the *Charter*;

f) A Declaration that an institutional apology, acknowledging that the rights of CAF members were violated by the CAF's COVID-19 vaccination policy and its implementation, is warranted."

[43] Under the "[g]rounds for making this application" in the Notice of Application, the Applicant sets out a chronology of events, and the findings of the MGERC and CDS. Of the seven paragraphs in this section, one addresses the grounds of the application substantively. It states that the CDS "based his decision on an erroneous finding of law and therefore could not have found on a balance of probabilities that the Applicant was not aggrieved." The Applicant also stated that he has "exhausted all administrative measures available to him within the CAF."

[44] The Applicant also sought costs of the action on a full indemnity basis, prejudgment and post-judgment interest.

[45] The grounds set out in the Notice of Application were limited to one paragraph with no detail on what constituted the reviewable "erroneous finding of law."

[46] The circumstances of this case do not justify an exception that deviates from the requirements under Rule 301 based on the Applicant's failure to plead the grounds he intended to argue in the Notice of Application.

[47] Second, it is well established in the case law that courts will generally refuse to exercise their discretion to consider a new issue on judicial review where the issue could have been raised before the original decision-maker (*Canada (Attorney General) v EllisDon Corporation*, 2024 FCA 200 at para 54; *Oleynik v Canada (Attorney General)*, 2020 FCA 5 at para 71; *Alberta (Information and Privacy Commissioner) v Alberta Teachers' Association*, 2011 SCC 61 at paras 22-26 [*Alberta Information and Privacy Commissioner*]).

[48] There are a number of reasons for this general rule, including respect for the first instance decision-maker, prejudice to the opposing party, and the possibility of denying the court an adequate evidentiary record to consider the issue at hand as the factual record relating to the issue may be incomplete (*Bank of America v Canada (Attorney General)*, 2025 FCA 9 at para 7; *Alberta Information and Privacy Commissioner* at paras 24-26).

[49] In addition, it is established that allegations of conflict of interest or apprehension of bias must be raised at the first opportunity or as soon as reasonably possible. The failure to do so will amount to an implied waiver (*Hennessey v Canada*, 2016 FCA 180 at para 20 [*Hennessey*], other citations omitted; *Teksavvy Solutions Inc v Bell Canada*, 2024 FCA 121 at para 58).

[50] The reasoning behind this principle is to give the first-instance decision-maker, such as the CDS, a chance to address the matter before any harm is done, to try to repair any harm, or to explain itself (*Hennessey* at para 21).

[51] The extent of all the new issues brought forward by the Applicant for the first time on judicial review is significant and the Applicant has now cast a wide net. The Applicant is seeking to impugn the Decision under review by raising new issues which the CDS was never made aware of. The CDS could not have considered nor addressed them in the Decision. As Justice Grammond aptly explained, "[o]n judicial review, one cannot bring new information or documents to the Court to make the decision appear unreasonable in retrospect" (*James v Canada (Attorney General)*, 2025 FC 187 at para 7).

[52] Given the above, I decline to exercise my discretion to consider the Applicant's new issues and arguments that were not put forward in the CAF grievance process and not plead in the Notice of Application, as it would be inappropriate to do so (*Alberta Information and Privacy Commissioner* at para 22).

[53] As such, the proper scope of this application for judicial review must be restricted to reviewing the Decision based solely on the issues that the Applicant raised in the grievance process, which is the constitutionality and legality of the Directives under section 7 of the *Charter*.

IV. Issues

[54] The issues before this Court are therefore:

a) Whether the Decision and its conclusion that the Directives contested did not breach the Applicant's rights under section 7 of the *Charter* is reasonable, applying the reasonableness standard of review (*Vavilov*).

b) Considering the above issue before the Court, is the application for judicial review moot?

[55] I start with the issue of mootness as it is determinative.

[56] The leading case regarding the principles of mootness remains *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 [*Borowski*].

[57] As described by the Supreme Court in *Borowski*, the doctrine of mootness is an aspect of a general policy or practice pursuant to which a court may decline to decide a case that raises merely a hypothetical or abstract question. If a decision will have no practical effect on such rights, then a court will decline to decide a case. The matter will therefore not be heard unless the court exercises its discretion to depart from this general policy or practice (*Kakuev v Canada*, 2022 FC 1465 at para 16 [*Kakuev*]).

[58] *Borowski* elaborates a two-prong test to determine whether a Court should decline to hear a case due to mootness.

[59] Under the first prong, the Court must determine whether there is any "live controversy" or "tangible and concrete dispute" between the parties. If the answer is no, the matter is moot.

[60] Under the second prong, when a matter is found to be moot, the Court must then determine whether it should nevertheless exercise its discretion to hear the case, based on three factors: (1) whether an adversarial context continues to exist between the parties; (2) concern for judicial economy; and (3) whether the Court would be intruding on the legislature's role by rendering a decision (*Borowski* at pp 358-362).

A. *There is no live controversy*

[61] The Applicant argues that there remains a live controversy that directly impacts him. He argues that the stress resulting from his forced vaccination and his fear of a potential loss of employment continue to affect him even though he complied with Directive #1. He submits that his case is not academic given the past harm and ongoing systemic issues with the CAF and the CDS. Additionally, Directive #3 still requires COVID-19 vaccination for deployment and some training exercises. He is requesting declaratory relief that would address past violations and provide guidance for future policies even if Directive #1 is no longer in effect.

[62] The Applicant submits that the cessation of Directive #1 does not limit the need for a declaration of unconstitutionality of all the Directives, even if Directive #3 does not apply to him directly. The Applicant explains that he faced coercion under Directive #1, the effects of which he states continue to affect him to this day. The COVID-19 vaccination was an unwanted medical procedure, and he had no choice but to receive it as he would not have been able to find alternate employment if he was not vaccinated. The Directives' overbreadth into his "inherently private choices" go to the "core of what it means to enjoy individual dignity and independence."

[63] Even though the Applicant admits that the Directives had a rational connection to its purpose of protecting health and safety during the COVID-19 pandemic, their implementation exhibited arbitrariness, overbreadth, and disproportionality. He states that CAF members may also be required to return to a COVID-19 vaccine mandate in the future, and that the review of its constitutionality is therefore required for the CDS to adjudicate vaccination refusals in the future.

[64] I agree with the Respondent's submissions that there is no live controversy.

[65] In fact, it is uncontested that Directive #1 is no longer enforceable since Directive #3 suspended all previous directives. I acknowledge that Directive #3 is still in force, but it only affects specific CAF members. There is no evidence demonstrating that the Applicant is one of these members.

[66] Further, the Applicant complied with Directive #1 since he was vaccinated, and he faced no service-related consequence because of his vaccination status. The "live controversy" arising from Directive #1 no longer exists and this application is therefore moot.

[67] A similar finding was made in *Lavergne-Poitras v Canada (Attorney General)*, 2022 FC 1391 [*Lavergne-Poitras*], where a COVID-19 supplier vaccination policy was challenged. The Court in that case found that the declarations that were being sought would have no impact on the applicant's rights because the impugned policy was no longer in effect. Accordingly, the

application was moot because there was no longer a tangible and concrete dispute between the parties (*Lavergne-Poitras* at para 14).

[68] Having determined that the present matter is moot, I now turn to the question of whether I should nonetheless exercise my discretion to hear the matter under the second prong in *Borowski*.

B. *The Court will not exercise its discretion to hear the case*

[69] The first factor requires me to consider whether an adversarial context continues to exist between the parties. Here, the Respondent concedes that an adversarial context still exists. I acknowledge and agree with this concession since both sides take opposing position on whether the Directives breached section 7 of the *Charter*. This factor is, however, not determinative in my analysis (*Borowski* at para 42).

[70] On the second factor, the Court should assess whether there is any practical utility in deciding the matter or whether it is a waste of judicial resources (*Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 at para 9 [CUPE]).

[71] The Supreme Court in *Borowski* indicates that this factor will weigh in favour of hearing a case when the decision will have some practical effect on the rights of the parties, where the matters are “of a recurring nature but brief duration,” or where it would be in the public interest to hear the case (*Borowski* at p 360).

[72] The Applicant argues that the Court should exercise its discretion to hear the merits of the application. The Applicant alleges that practical utility, and the "public interest" justifies the use of judicial resources since the outcome of this decision is crucial to stop future violation of section 7 of the *Charter* in the context of vaccine mandates. The Court's conclusion in this judicial review could guide future military command actions, prevent future overreaches and protected CAF members' civil liberties. Further, the Applicant considers the fact that Directive #3 is still in effect to be an indication that a vaccine mandate could quickly expand again. According to the Applicant, settling this judicial review will have a practical effect since it will help solve a recurring legal issue.

[73] The Respondent submits that the Court should not exercise its discretion to hear the application on the merits. First, there is no practical utility for the Court to consider this issue because the policy that applied to the Applicant, Directive #1, no longer exists. In his grievance dated December 11, 2021, the Applicant outlined that he was challenging the constitutionality and the legality of Directive #1, which he sought to have rescinded. Most importantly, it is clear that Directive #1 is no longer in effect and that the factual context grounding the Applicant's claim no longer exists. Any review of Directive #1 would therefore be purely academic. There is no longer a directive in place that requires the Applicant to be vaccinated. The Applicant has also already received the vaccine and has not been reprimanded in any way.

[74] Second, the Respondent submits that the Court would be exceeding its proper role in considering this matter, as the Applicant is asking the Court to create legal precedent "for the sake of it."

[75] Finally, the Respondent contends that the Applicant's argument on the "public interest" of this matter is purely speculative and not borne from the evidence. Contrary to what the Applicant has asserted, a hypothetical scenario where the COVID-19 pandemic might return does not warrant the CDS to require directions from the Court. The Respondent further argues that there is no need to settle uncertain jurisprudence and cited a number of Court decisions already concluding that rights under section 7 of the *Charter* were not engaged in the context of COVID-19 vaccinations.

[76] I agree with the Respondent's submissions that deciding this case will have no practical consequences for the parties. As such, this factor weighs strongly in favour of not deciding the moot issue.

[77] I can do no better but to echo Justice Pamel (as he then was) who considered a similar situation in *Lavergne-Poitras*. Justice Pamel found that the determination by the Court of a suspended vaccination policy would have no practical impact on the parties' rights and underlined the importance that the assessment of a policy's *Charter* compliance is necessarily tied to the factual circumstances at the time the policy was implemented. *Charter* decisions must not be made in a factual vacuum (*Lavergne-Poitras* at para 32, other citations omitted). This applies to the Applicant's case.

[78] The Federal Court of Appeal in *Wojdan v Canada (Attorney General)*, 2022 FCA 120 [*Wojdan*] also found an appeal moot once the COVID-19 vaccination policy that was the subject of the challenge was subsequently suspended, and federal public servants were no longer

required to be vaccinated as a condition of employment. Having considered the *Borowski* factors, the Federal Court of Appeal concluded that the exercise of its discretion to hear the case was not warranted (*Wojdan* at para 4, citing *Borowski*).

[79] In the Applicant's case, I find that the declarations he seeks would have no impact on his rights because Directive #1 is no longer in effect, and there is no evidence that he is subject to the existing Directive #3. The facts existing when the Applicant filed his grievance in 2021 no longer apply to his current circumstances.

[80] The Applicant has also submitted no evidence to the effect that the underlying issues in this matter are recurring because of a potential expansion of the vaccine mandate. A declaration from this Court is unlikely to have any practical effect in the future since the exact circumstances that were in place at the time the Directives (especially Directive #1) were issued are unlikely to arise again (*Ben Naoum v Canada (Attorney General)*, 2022 FC 1463 at para 42 [*Ben Naoum*]).

[81] I therefore find it speculative that the Directives would be expanded in the future, as the Applicant has alleged. If this does happen, then the individual who may be affected by a possible future vaccine mandate would still be able to present a grievance within the CAF process. At that juncture, the specific language of the future directive will have to be considered in light of the grievance that challenges it and the current facts.

[82] Additionally, the public interest does not warrant the use of judicial resources in deciding a moot issue, since similar questions have already been dealt with by multiple court cases.

Finding this matter moot and refusing to exercise my discretion to hear this case would be consistent with the current state of the law (see *Rickard v Canada*, 2024 FC 1915; *Yates v Canada (Attorney General)*, 2023 FC 985 [*Yates*]; *Peckford v Canada (Attorney General)*, 2023 FCA 219 [*Peckford*]; *Ben Naoum; Kakuev; Lavergne-Poitras*; *Wojdan*; *Neri v Canada*, 2021 FC 1443).

[83] As the Federal Court of Appeal noted, there is a difference between a case that raises an issue in which many people are personally interested in having a decision, and a case that raises "an issue of public importance of which a resolution is in the public interest" (*Peckford* at para 34, citing *Borowski* at p 361). I recognize there may be an interest in this case, but it is not an issue of "public interest" for the purposes of the assessment of the *Borowski* factors.

[84] I further acknowledge the case of *Syndicat des métallos, section locale 2008 c Procureur général du Canada*, 2022 QCCS 2455 identified by the Respondent and also relied upon by the Applicant. I recognize that this case departs from the existing case law cited above and that it is described by the Respondent as an "outlier" case. However, I am not bound by the decision of the Superior Court of Quebec. The Federal Court of Appeal is binding on me, and the Federal Court decisions are more relevant and instructive.

[85] As such, given all of the above, the second factor has not been met.

[86] The third factor requires the Court to consider whether rendering a decision would be intruding on the legislature's role. In this assessment, the Court must be sensitive to its role as

the adjudicative branch. Put otherwise, the issue is whether the Court would be exceeding its proper role by making law in the abstract, a task reserved for Parliament (*CUPE* at para 9).

[87] This case involves *Charter* arguments, and I note that the development of the *Charter* must necessarily be a careful process. Where issues do not compel commentary on *Charter* provisions, none should be undertaken (*Phillips v Nova Scotia Commissioner of Inquiry into the Westray Mine Tragedy*, 1995 CanLII 86 (SCC), [1995] 2 SCR 97 at para 11 [*Phillips*], citing L*aw Society of Upper Canada v Skapinker*, 1984 CanLII 3 (SCC), [1984] 1 SCR 357 at p 383).

[88] Courts should therefore avoid expressing opinions on questions of law where it is not necessary to dispose of the case, particularly when the question is constitutional in nature. This policy is based on the premise that unnecessary constitutional pronouncement may prejudice future cases, the implications of which have not been foreseen (*Rebel News Network Ltd v Canada (Leaders' Debates Commission)*, 2020 FC 1181 at para 64 citing *Phillips* at paras 9-12).

[89] Under these circumstances, the Court will be exceeding its proper role in determining this application. Indeed, given my findings on the Directives, and in particular on Directive #1 and #3, assessing the application would be to "gratuitously interpret" the Directives at issue "in a case with no practical consequences, just to create a legal precedent, which would be a form of law-making for the sake of law making. That is not the proper task of the courts." (*Kakuev* at para 30 citing *CUPE* at para 13).

[90] In sum, I find that the Applicant has not met the *Borowksi* test. The relief sought has no practical consequences for the parties and it would therefore be a waste of judicial resources to decide a moot issue. I also do not find that the circumstances of this case justify pronouncing a judgment in the absence of a live dispute affecting the parties' rights (*Lavergne-Poitras* at para 40, citing *Borowski* at p 362).

V. Conclusion

[91] I have considered and weighed all the various factors, and I accordingly decline to exercise my discretion to hear the matter. The application for judicial review is dismissed on the grounds that the matter is moot.

[92] Finally, the style of cause should be corrected, as the Applicant incorrectly named the Respondent as "the King in Right of Canada." The proper Respondent should be the "Attorney General of Canada."

VI. Costs

[93] Given that the Respondent was successful, he is entitled to his costs. The Respondent sought a lump sum of $3,780 costs in accordance with Column 3 of the Tariff B of the *Rules*. I consider those costs to be reasonable and grant the Respondent the amount requested.

JUDGMENT in T-2212-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed as moot.

2. The Respondent is awarded the sum of $3,780 in costs.

3. The style of cause is corrected to name "Attorney General of Canada" as the proper Respondent.

"Phuong T.V. Ngo"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2212-24
STYLE OF CAUSE:	SERGE TETREAULT v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	EDMONTON (ALBERTA)
DATE OF HEARING:	MARCH 11, 2025
JUDGMENT AND REASONS:	NGO J.
DATED:	JULY 28, 2025

APPEARANCES:

Catherine Christensen	FOR THE APPLICANT
Barry Benkendorf	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Valour Law Barristers and Solicitors St. Albert (Alberta)	FOR THE APPLICANT
Attorney General of Canada Edmonton (Alberta)	FOR THE RESPONDENT