

Federal Court



Cour fédérale

Date: 20260112

Docket: T-719-24

Citation: 2026 FC 35

Ottawa, Ontario, January 12, 2026

PRESENT: The Honourable Madam Justice Turley

BETWEEN:

B.K.J.L.

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] The Applicant, a self-represented inmate, became eligible for day parole in November 2022. In January 2023, the Parole Board of Canada [Parole Board] granted him day parole for six months, finding that he would not present an undue risk to society if released. However, in July 2023, the Parole Board directly revoked the Applicant's day parole because it determined that, based on his behaviour in the community while on day parole, the Applicant's risk to reoffend had

become undue. Following a hearing, the Parole Board confirmed the revocation of the Applicant's day parole in August 2023.

[2] The Applicant appealed the Parole Board's decision. The Parole Board of Canada Appeal Division [Appeal Division] affirmed the Parole Board's decision, concluding that the revocation decision was reasonable. The Applicant seeks judicial review of the Appeal Division's decision.

[3] In September 2025, the Parole Board granted the Applicant day parole for a period of six months. This development, however, was only brought to the Court's attention on November 3, 2025, within weeks of the scheduled hearing of the judicial review application. The Respondent asserted that the Applicant's release on day parole rendered the underlying application moot. The Applicant disagreed and did not consent to discontinuing his application.

[4] Given the timing, and that this matter had already been adjourned twice, I advised the parties that the Court would hear their submissions on mootness at the hearing on November 18, 2025, along with their arguments on the merits. Pursuant to the Court's Directions of November 5 and 12, 2025, the Respondent filed written submissions, as well as an affidavit attaching the Parole Board's September 19, 2025 decision. The Applicant also filed written submissions addressing the mootness of the underlying application.

[5] For the reasons set out below, the application for judicial review is dismissed as moot. In the circumstances, there is no longer a live controversy for the Court to adjudicate. Furthermore, I decline to exercise my discretion to decide the application on its merits.

II. Analysis

[6] Mootness is assessed based on the two-step analysis set out in *Borowski v Canada (Attorney General)*, 1989 CanLII 123 (SCC), [1989] 1 SCR 342 [*Borowski*]. The first step requires an assessment of whether there remains a “live controversy” between the parties “that affects or may affect the rights of the parties”: *Democracy Watch v Canada (Attorney General)*, 2018 FCA 195 at para 10 [*Democracy Watch*].

[7] If there is no longer a live controversy, the second step of the analysis requires the Court to decide whether it should nevertheless exercise its discretion to hear the matter: *Hakizimana v Canada (Public Safety and Emergency Preparedness)*, 2022 FCA 33 at para 11 [*Hakizimana*].

[8] In deciding whether to hear a moot case, three factors guide the Court’s exercise of discretion: (i) the absence or presence of an adversarial context; (ii) the concern for judicial economy; and (iii) the Court’s proper law-making role: *Borowski* at 358–363; *Hakizimana* at para 20; *Democracy Watch* at para 13.

[9] The application of these factors is not “a mechanical process”: *Borowski* at 363. The extent to which each of the three factors is engaged depends on the circumstances of the case and one may outweigh the others: *Sinclair v Canada (Attorney General)*, 2023 FC 750 at para 18; *NNS Organics Limited v Canada (Health)*, 2020 FC 819 at para 40; *Canada (Public Safety and Emergency Preparedness) v Allen*, 2019 FC 932 at para 14.

A. *There is no longer a live controversy*

[10] The Applicant has failed to establish that there remains a live controversy which affects or may affect his rights. In deciding that the application is moot, given the Applicant's recent release on day parole, I am guided by the Court's decision in *Ruston v Canada (Attorney General)*, 2020 FC 1020 [*Ruston*].

[11] In *Ruston*, the applicant also sought judicial review of the revocation of his day parole but was subsequently released on day parole. The Court considered whether there was still a live controversy from the standpoint of whether quashing the underlying revocation decision could assist the applicant if he were successful on the merits. Justice Fuhrer concluded it would not: *Ruston* at para 11.

[12] Justice Fuhrer reasoned that quashing the revocation decision "would mean only that the circumstances would be reconsidered (were the matter sent back for redetermination), not necessarily that a different result would ensue": *Ruston* at para 12.

[13] Furthermore, Justice Fuhrer determined that the Parole Board's revocation decision was not a "sufficient impediment" to the Parole Board then granting the applicant day parole anew. This is because the matter was considered based on the applicant's subsequent and more recent circumstances: *Ruston* at para 13. As such, it had not been established that there was still a live controversy affecting the applicant's rights.

[14] Here, the prior revocation of the Applicant's day parole was a neutral consideration that did not impede the Parole Board granting day parole anew. Both the Applicant's performance on community release and his community behaviour while on day parole were rated as "neutral" factors (as opposed to "aggravating" factors) throughout the Parole Board's September 2025 decision: Parole Board of Canada Decision dated September 19, 2025 at 5, 7, 10, 11, Exhibit A to the Affidavit of Devin Smith, affirmed November 12, 2025 [Parole Board Decision].

[15] I acknowledge that the prior revocation of the Applicant's day parole did factor in the Parole Board's determination that full parole release was "premature": Parole Board Decision at 11. However, it was but one factor. The Parole Board also relied upon the Applicant's most recent psychological risk assessment, which opined that his risk would be manageable on day parole, but that full parole was still premature: Parole Board Decision at 6. In addition, the Applicant's Case Management Team recommended that full parole be denied as the Applicant required "a gradual and structured release": Parole Board Decision at 9. Significantly, at his parole hearing, the Applicant acknowledged that he was not "quite ready for a full parole without residency, and that [he] need[ed] 3 to 6 months to prove [himself]": Parole Board Decision at 11.

[16] The Applicant argues that the Parole Board's revocation decision has had "lasting consequences" that demonstrate his application for judicial review is not moot. He alleges that he has "suffered physical abuse while incarcerated and continues to struggle to navigate both life and the court system" and asserts that these "impacts remain live and require judicial scrutiny": Applicant's Written Submissions at para 15. With respect, this argument misapprehends the role of this Court on judicial review. Even if the Court were to decide the application on its merits, it

would be considering the reasonableness of the decision to revoke parole, not the alleged impacts of that decision on the Applicant.

[17] For these reasons, I find that the application for judicial review is moot.

B. *The circumstances do not warrant hearing the moot application*

[18] In the circumstances, I decline to exercise my discretion to hear this moot application. As already explained, while the Court's discretion is guided by the three *Borowski* factors, it is not a mechanical process. In addition, as demonstrated below, there is considerable overlap in the considerations that are relevant to each of the three factors: *Musende v Canada (Attorney General)*, 2025 FC 52 at para 71.

(1) The matter has lost its adversarial nature

[19] This factor is concerned with whether an adversarial context (or relationship) continues to exist. There is no doubt that both parties continue to vigorously defend their respective positions in this litigation. This does not, however, end the inquiry.

[20] The Federal Court of Appeal has held that a dispute may lose its adversarial nature where the relief the Court could order would not have any practical effect on the litigant's rights: *Abel v Canada (Citizenship and Immigration)*, 2021 FCA 131 at para 17 [*Abel*]. As discussed above, that is the case here. An order quashing the Parole Board's 2023 revocation decision would have no practical effect.

[21] In *Borowski*, the Supreme Court held that, despite the cessation of a live controversy, collateral consequences may provide the necessary adversarial context: *Borowski* at 359. Here, the Applicant argues that, even if the Parole Board’s 2023 revocation decision is moot, it has collateral consequences. In that vein, he asserts that the decision “may prejudice future parole reviews, risk assessments, and credibility”: Applicant’s Written Submissions at para 7. I do not agree.

[22] Indeed, the Parole Board’s September 2025 decision demonstrates that the prior revocation decision did not impede the Applicant’s recent release on day parole. It was a neutral consideration. The Applicant was granted day parole based on updated information in his recent Psychological Risk Assessment and Correctional Plan Update. While the prior revocation of day parole factored into the Parole Board’s refusal to grant full parole, there were other contributing factors including the Applicant’s own readiness.

[23] On balance, I find that this factor does not weigh in favour of exercising my discretion to decide the application on its merits.

(2) Judicial economy militates against hearing the application

[24] The second factor related to judicial economy is concerned with the allocation of scarce judicial resources.

[25] The fact that the application was heard on its merits does not dispel the Court’s concern about judicial economy: *Abel* at para 21; *Gentile v Canada (Citizenship and Immigration)*, 2020 FC 452 at para 16. As explained in paragraphs 3–4, the mootness issue was raised less than three

weeks before the scheduled hearing date of the application for judicial review. As a matter of practicality, rather than adjourn the matter, the Court heard both the issue of mootness and the merits of the application at the same time.

[26] In *Borowski*, the appellant argued that having heard the parties on its merits, it would be a waste if the Supreme Court declined to decide the appeal. While finding “some merit” to this position, the Supreme Court held that to “give effect to this argument would emasculate the mootness doctrine which by definition applies if at any stage the foundation for the action disappears” [emphasis added]: *Borowski* at 363.

[27] Where issues of public importance are raised, it may be in the public interest to decide a moot application on its merits: *Borowski* at 361–362. I do not agree with the Applicant, however, that his application raises “matters of public importance that warrant judicial determination”: Applicant’s Written Submissions at para 2.

[28] The revocation of parole, by its nature, is a highly fact specific determination. The grounds of review in the Applicant’s Notice of Application support that his application is not one of public importance:

- (i) whether the Parole Board made and relied on factual findings that were not supported by the record;
- (ii) whether the Parole Board improperly applied the criteria for revocation in considering the length of time remaining in the Applicant’s sentence;

- (iii) whether the Parole Board erred in placing “neutral weight” on the Applicant’s favourable June 2023 progress report; and
- (iv) whether the Parole Board’s decision that the Applicant was an undue risk of reoffending on day parole is defensible in light of the facts and the law.

Notice of Application dated March 27, 2024 at 7, 14, 16, 19, Applicant’s Record at 7, 14, 16, 19.

[29] Finally, whether a decision would have any practical effect on the parties’ rights is also a relevant consideration at this stage: *Abel* at para 19. As already discussed, the Applicant has failed to satisfy me that an order quashing the revocation decision would have any practical effect.

[30] In the circumstances, judicial economy weighs against deciding the application on its merits.

(3) The Court should not exceed its proper law-making function

[31] The third factor is concerned with the Court playing its proper role. Courts should refrain from pronouncing judgments in the absence of a dispute affecting the rights of the parties because that may be viewed as intruding on the legislator’s role: *Borowski* at 362; *Canadian Union of Public Employees (Air Canada Component) v Air Canada*, 2021 FCA 67 at paras 9, 13.

[32] Consequently, to the extent the Applicant raises an issue about the Parole Board’s interpretation and application of the legislative criteria for release under subsection 135(5) of the

Corrections and Conditional Release Act, SC 1992, c 20, that issue is more appropriately considered in a case with a live dispute.

[33] This factor also weighs in favour of not determining the application on its merits.

III. Conclusion

[34] Based on the foregoing, the application for judicial review is moot. Further, I find no basis upon which to exercise my discretion to decide the moot application. The application is therefore dismissed.

[35] The Respondent is not seeking costs, and I agree that none should be payable.

JUDGMENT in T-719-24

THIS COURT'S JUDGMENT is that:

1. The application for judicial review is dismissed as moot.
2. No costs are awarded.

“Anne M. Turley”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-719-24

STYLE OF CAUSE: B.K.J.L. v ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: BY VIDEOCONFERENCE

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APPEARANCES:

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