

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20240926**

**Docket: A-256-23**

**Citation: 2024 FCA 155**

[ENGLISH TRANSLATION]

**CORAM: LEBLANC J.A.  
ROUSSEL J.A.  
HECKMAN J.A.**

**BETWEEN:**

**MARC GRAVEL**

**Appellant**

**and**

**THE ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard at Montréal, Quebec, on September 26, 2024.

Judgment delivered from the bench at Montréal, Quebec, on September 26, 2024.

**REASONS FOR JUDGMENT OF THE  
COURT BY:**

**LEBLANC J.A.**

**Federal Court of Appeal**



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**REASONS FOR JUDGMENT OF THE COURT**

**(Delivered from the bench at Montréal, Quebec, on September 26, 2024.)**

**LEBLANC J.A.**

[1] This is an appeal from an order of Justice St-Louis of the Federal Court (the Motions Judge) dated July 6, 2023. In her order, the Motions Judge struck, on the ground that it had become moot, the appellant's application for judicial review of a decision of the Parole Board of Canada's Appeal Division upholding the Board's decision to extend, for a period of six months, the special condition of release that it had imposed on the appellant on June 14, 2022, after

cancelling the suspension of his full parole. The condition required the appellant to reside in a designated residential facility for a period of three months.

[2] The appellant does not dispute that the application for judicial review underlying this appeal has become moot since the Board did not renew the special condition of release when it expired on March 19, 2023. What the appellant is criticizing is the Motions Judge's application of the criteria set out in the leading decision on this matter (*Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342 at 361 (*Borowski*)) to guide the exercise of her discretion in determining whether the application should nonetheless be heard on the merits, despite it being moot. The appellant essentially argues that the correctional authorities' decision to extend this condition of release, which is now on his prison record, will continue to have an impact on decisions made in his regard in the future, and will therefore continue to have a real—and negative—impact on his rights. In his view, this justifies considering his application for judicial review on the merits because there is still an adversarial context between the parties by reason of the special nature and reality of the relationship between prison authorities and the inmates under their authority. He submits that in these circumstances, the interests of justice require such a review.

[3] From the outset, it is well established that an application for judicial review may be summarily dismissed on the ground that it is moot (*Lukács v. Canada (Transportation Agency)*, 2016 FCA 227 at para. 6; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250 at paras. 47 and 48). It is also well established that we can intervene in this case only if the Motions Judge made a palpable and overriding error or an

extricable error of law in exercising her discretion once she had concluded that the underlying application for judicial review was moot (*Peckford v. Canada (Attorney General)*, 2023 FCA 219 at para. 27, leave to appeal to the Supreme Court of Canada dismissed August 29, 2024, No. 41082; *Housen v. Nikolaisen*, 2002 SCC 33; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215 at para. 79).

[4] We are all of the view that the Motions Judge made no such error here. In short, the appellant is urging us to decree that the discretion of the courts to decide on an otherwise moot issue should systematically be exercised in favour of reviewing the issue on its merits, on the ground that the relationship between inmates—at least those who, like him, are serving a life sentence—and the prison authorities is an ongoing one. However, this is a step that we cannot take.

[5] As the appellant himself acknowledges, each case must be decided on its own facts. In this case, the impact that the decision to extend the special condition of release might have on future decisions by the prison authorities in his regard is purely conjectural, particularly in light of the fact that this condition was not renewed in March 2023, which, in itself, appears to be a positive development in the appellant's prison record. As the Federal Court noted, it is preferable, in this context, if such a condition were to be imposed again on the appellant, that its validity be assessed in light of the facts and circumstances that prevailed at the time of the reimposition. This, in our view, is perfectly consistent with the necessarily evolutionary nature of decisions taken in this regard. It is useful to point out that the mere fact that a case raising the

same point is likely to recur even frequently should not by itself be a reason for considering on its merits a matter that has become moot (*Borowski* at 361).

[6] The appellant also criticizes the Motions Judge for not explicitly analyzing each of the three criteria set out in *Borowski*. Although a more detailed analysis would have been preferable, this does not warrant the Court's intervention (*Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at para. 68). Here, the Motions Judge focused on the criteria that, in her view, weighed against her exercising her discretion. She also referred to the decision of one of her colleagues in *Adams v. Canada (Parole Board)*, 2022 FC 273 (*Adams*), a case with similar features to those in the case at bar and in which the three criteria in *Borowski* were analyzed in detail. This avenue was open to her.

[7] However, the appellant argues that *Adams* was more about whether the Board's Appeal Division had jurisdiction to dismiss an appeal on the basis that it had become moot. He further submits that *Najar v. Canada (Attorney General)*, 2015 FC 1411 (*Najar*) and *Gallone v. Canada (Attorney General)*, 2015 FC 608 (*Gallone*) were more compelling decisions for the Motions Judge.

[8] These arguments are without merit. On the one hand, in *Adams*, the Federal Court conducted its own analysis of the mootness of the substantive issues before it and asked itself whether it should nonetheless exercise its discretion to decide on these issues, despite them being moot. In other words, it conducted these analyses regardless of whether or not the Board's Appeal Division had the authority to reject an appeal on the basis that it had become moot

(*Adams* at para. 38). This provided a precedent that would have been useful to the Motions Judge.

[9] As for *Najar* and *Gallone*, both are distinguishable from this case. In one case (*Najar*), the suspension of the inmate in question's parole was mainly based on third-party information about his association with people from the street gang community. In the other case (*Gallone*), the Federal Court held that there was an important issue of procedural fairness affecting all inmates in circumstances similar to the applicant's that justified addressing the matter on the merits, despite it being moot. The Motions Judge was therefore justified in not considering herself bound by these two decisions because, it is important to reiterate, for the purposes of exercising what is essentially a discretionary power, each case is informed by its own facts.

[10] Finally, the appellant is asking us to consider new evidence. As the appellant concedes, the fact that this evidence could have been adduced before the Motions Judge is sufficient to dismiss this request. However, even considering this evidence, our position regarding the outcome of this appeal remains unchanged.

[11] The appeal will therefore be dismissed, all without costs, since the respondent is not claiming them.

“René LeBlanc”

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

<b>DOCKET:</b>	A-256-23
<b>STYLE OF CAUSE:</b>	MARC GRAVEL v. THE ATTORNEY GENERAL OF CANADA
<b>PLACE OF HEARING:</b>	MONTRÉAL, QUEBEC
<b>DATE OF HEARING:</b>	SEPTEMBER 26, 2024
<b>REASONS FOR JUDGMENT OF THE COURT BY:</b>	LEBLANC J.A. ROUSSEL J.A. HECKMAN J.A.
<b>DELIVERED FROM THE BENCH BY:</b>	LEBLANC J.A.

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