

Citation: 2026 NBKB 145

Date: July 13, 2026

Docket: FM-98-2025 / FM-99-2025

IN THE COURT OF KING’S BENCH OF NEW BRUNSWICK
TRIAL DIVISION
JUDICIAL DISTRICT OF FREDERICTON

BETWEEN:

AMERICAN IRON & METAL COMPANY INC. / LA
COMPAGNIE AMÉRICAINNE DE FER & MÉTAUX

(Respondent on Motion)

– and –

THE PROVINCE OF NEW BRUNSWICK as represented
by THE MINISTER OF ENVIRONMENT AND LOCAL
GOVERNMENT and THE PROVINCE OF NEW
BRUNSWICK as represented by THE MINISTER OF
JUSTICE AND PUBLIC SAFETY

(Applicants on Motion)

Date of Application: May 21, 2026

Date of Decision: July 13, 2026

Subject Matter: Mootness

Before: Justice E. Thomas Christie

At: Burton, New Brunswick

Appearances: Robert Brush and Romain Viel, for the Applicant
Mark Heighton and Lara Greenough, for the Respondent

Christie, J.

[1] The present Motions relate to two Applications for judicial review filed by the Respondent on Motion, American Iron & Metal Company Inc. (AIM). The Applicants on Motion, being the Respondents named in the underlying Applications, are the Province of New Brunswick, as represented by the Minister of Environment and Local Government (FM-98-2025) and the Minister of Justice and Public Safety (FM-99-2025). For ease of reference, where appropriate, I will refer to the Applicants on the Motions as PNB.

[2] PNB has filed two separate Motions in relation to each of the underlying Applications, arguing mootness and, that the Applications must, therefore, be dismissed. Both Motions were heard together. The applicable legal principles are similar. The application of those principles, to the circumstances of each case, may not result in a similar outcome. A brief overview is in order. In *American Iron & Metal Company Inc. v. PNB as represented by the Minister of Environment and Local Government and the Saint John Community Coalition*, 2024 NBKB 181, I wrote as follows, beginning at para. 4:

[4] By way of context, AIM operates a scrap metal facility at the Port of Saint John. It has been doing so since 2011 pursuant to various authorizations or approvals issued by PNB. Given the nature of its operations, Saint John city residents living in proximity to the facility have voiced their concern that their quality of life, their health and general wellbeing is negatively impacted by AIM's Port operations.

[5] On September 14, 2023, there was a fire at the AIM facility. This was not the first fire at that site. However, this fire was different. Its magnitude was apparently so substantial that City firefighting services were not, on their own, able to control it. Only with the fortuitous help of private firefighting services was the fire brought under control. PNB commissioned a Task Force to investigate what happened. The report of the Task Force is contained in the present Record. No objection was taken to its inclusion. I understand that AIM takes issue with portions of the Task Force Report and the process under which it generated its report. Those issues are captured in the underlying Applications. That I quote from, or refer to the Report in these reasons, should not be construed as meaning that I have determined that the Report

can withstand the scrutiny AIM raises. With that said, and for the purpose of context only, I note the following from the opening paragraph of the Report:

The fire at the American Iron and Metal (AIM) facility at the Port of Saint John on September 14, 2023 had profound impacts on our community. Emergency orders were issued. Residents were ordered to shelter in-place. Schools and businesses were closed, impacting the local economy and a sizeable portion of the downtown workforce. Air quality warnings required hospitals and other buildings to restrict air flow to protect vulnerable residents, while the public sheltered indoors and watched with mounting alarm as the fire sent plumes of toxic smoke, ash and soot throughout the City of Saint John and beyond.

[6] The Report goes on, at page 2, to note certain of AIM's operational history at the Port facility:

Many alarm bells rang in the lead up to the fire. While the EIA approval based upon the proposal presented by AIM did not identify explosions or fire as a significant risk, AIM has experienced at least 181 explosions and 22 fires since 2011, with a sharp increase in the number of such events reported in the last five years. From the perspective of workplace health and safety there have been 21 incident investigations by the WorkSafe NB compliance and enforcement division since 2011, five of which were significant and, tragically, two of which were fatalities.

[3] The Application assigned Court File Number FM-98-2025 relates to PNB's approval allowing AIM to operate a metal recycling operation at AIM's Port facility (*Air Quality Regulation – Clean Air Act*, NB Reg 97-133), including the use of a metal shredder. Following the fire on September 14, 2023, the approval to operate was immediately suspended – a decision upheld by the Minister on appeal on November 15, 2023. This is the decision under judicial review. The substantive basis for PNB's present Motion is that, regardless of the act of suspension, the Approval to Operate had a designated end date of April 30, 2024. The

Application for judicial review was filed on February 12, 2024 (approximately 2.5 months before the expiry date of the Approval).

[4] The Application assigned Court File Number FM-99-2025 relates to PNB's prior grant of a salvage dealers license to AIM – a license which was required for AIM to operate its business at the Port location (*Salvage Dealers Licensing Act*, RSNB 2016, c 111). The license had a specified term which ran from July 1, 2022, with an expiry of June 30, 2024. However, on December 29, 2023, the Minister of Public Safety revoked AIM's salvage dealers license. On March 27, 2024, AIM filed its Application for judicial review of the revocation decision (approximately 3 months before the expiry date of the license). As with PNB's argument on the suspension decision, it also argues that the expiry of the salvage dealers license on June 30, 2024, makes the issue now moot.

[5] With regard to both files, PNB argues, by way of the present Motions, that because both the approval to operate and the salvage dealers license have expired, pursuant to their own terms, there is no longer any live issue or controversy - the Applications at issue are moot. AIM argues that, while both the license and the approval to operate have expired, it would be beneficial to the parties to have a review of the process leading to the decisions at issue. This would, AIM argues, “move the needle”, as to what the Ministers must be attune to when exercising their authorities under the relevant legislation. This would be useful in any future attempts to secure the required approvals to resume full operations.

[6] While not directly pertinent to the present Motions, there has been a third Application for judicial review (FM-100-2025) relating to a decision of the Minister of Environment and Local Government denying the request of AIM to renew the approval to operate upon its expiry. The date of that impugned decision is noted in the Application as having occurred on or about May 9, 2024. There is no Motion to dismiss this third Application.

ARGUMENT AND ANALYSIS

[7] All parties begin their assessment of the mootness issue with reference to the decision of the Supreme Court of Canada in *Borowski v. Canada (Attorney General)*, [1989] 1 S.C.R. 342. At p. 353 is found the following description of the general principles underpinning the doctrine of mootness:

The doctrine of mootness is an aspect of a general policy or practice that a court may decline to decide a case which raises merely a hypothetical or abstract question. The general principle applies when the decision of the court will not have the effect of resolving some controversy which affects or may affect the rights of the parties. If the decision of the court will have no practical effect on such rights, the court will decline to decide the case. This essential ingredient must be present not only when the action or proceeding is commenced but at the time when the court is called upon to reach a decision. Accordingly if, subsequent to the initiation of the action or proceeding, events occur which affect the relationship of the parties so that no present live controversy exist which affects the rights of the parties, the case is said to be moot. The general policy or practice is enforced in moot cases unless the court exercises its discretion to depart from its policy or practice period.
[emphasis added]

[8] I take from the above reasons that when “... *the decision of the court will have no practical effect on such rights, the court will decline to decide the case*”. Moreover, it appears that the existence of a live controversy at the time the matter is filed for review is not sufficient to overcome mootness. The issue must exist “... *at the time when the court is called upon to reach a decision*”. Despite this general framework, there still rests in the court the discretion to proceed to a hearing on the underlying proceeding.

[9] AIM points to the case of *New Brunswick (Minister of Health & Community services) v. G.(J.)*, [1999] 3 SCR 46. In that case, the court took up the question of a *Constitutional* entitlement to state funded counsel for indigent parents in the case of a Ministerial application for guardianship. During the time the matter proceeded through the courts, the children of *G.(J.)*, who had been taken from her under the authority of the Minister, had been returned to her and

there was no live issue as between the parties. Nevertheless, the Supreme Court, in the exercise of its discretion, heard and determined the *Constitutional* issue that had presented itself during the course of the proceedings below. Presently, of course, there is no *Constitutional* issue at stake. But the Court proceeded in exercising its discretion to hear the merits.

[10] Returning to *Borowski*, the Court sets the two-step analysis as follows at p. 353:

The approach in recent cases involves a two-step analysis. First it is necessary to determine whether the required tangible and concrete dispute has disappeared and the issues have become academic. Second, if the response to the first question is affirmative, it is necessary to decide if the court should exercise its discretion to hear the case. The cases do not always make it clear whether the term “moot” applies to cases that do not present a concrete controversy or whether the term applies only to such of those cases as the court declines to hear. In the interest of clarity, I consider that a case is moot if it fails to meet the “live controversy” test. A court may nonetheless elect to address a moot issue if the circumstances warrant.

[11] I want to repeat a point noted above relating to the timing of the end of the terms of both the approval to operate and the salvage dealers license. With respect to the suspension of the approval to operate, the Application was filed on February 12, 2024, being approximately two and one half months before the expiry of the approval on April 30, 2024. With respect to the salvage dealers license, the Application was filed on March 27, 2024, being approximately three months before the expiry date of June 30, 2024. In the normal course of things, it has not been the court’s practice to receive such filings, schedule hearings and decide on the merits of the Applications, within the period from the filings to the expiry dates at issue. In the present cases, the matters were complicated by proceedings related to a proposed intervenor, the provision of a proper record that may have been before the decision-makers and further rulings that were required on certain paragraphs in the supporting affidavits. In other words, it was not feasible for the court to determine all collateral issues, and the merits of the Applications, before the approval to operate and the salvage dealers license expired. Moreover, AIM asserts that the delay in the matters moving forward were a direct result of PNB refusing to provide, in a timely manner, the documents pertaining to the decision under review. In any event, the passage of time

overtook the ability of the parties, and the court, to resolve all collateral issues in a time frame that would have preceded the relevant expiry dates.

[12] One could argue, as PNB did, that once the expiry dates were reached, the live controversy ended. Thus, the proceedings became moot. The difficulty is that, in the context of such a regulatory regime, it is quite possible that any challenge to a decision-maker's action may never get to a point of review since an expiry date has been reached, thus the live controversy is, arguably, gone. In such circumstances, judicial review may never be a meaningful process. There is merit to this concern (see *McKenzie v. Mikisew Cree First Nation*, 2020 FC 184). This is why courts have accepted there to be discretion to hear such disputes, despite the live controversy arguably having passed. However, as PNB argued, this point may ring a bit hollow where, as here, AIM did not file their Applications until near the end of the ninety-day window within which our *Rules* require such Applications to be filed.

[13] It is generally accepted by the parties that, with the onset of the expiry dates, the issues *could* fall within a definition of being moot. This is so, in part, because there is no practical remedy to re-establish, '*what might have been*', during the interval of time from the impugned decisions to the date of expiry. The determination of a useful remedy is a concern to this court in light of the expiry of the approval and the license. While it may be proper to declare that the decisions to suspend the approval and revoke the salvage dealers license be quashed, we are left with the question of, 'then what?'

[14] But that is a question more appropriately considered at the judicial review application and is of limited value for the present considerations. As noted in *Ramizi v. College of Immigration and Citizenship Consultants*, 2025 FC 692, at paras. 18, 20:

[18] It is unlikely that Mr. Ramizi would have an effective remedy if this application is granted. However, the matter is not properly classified as moot for that reason.

[19] *Omitted*

[20] The Respondent argued that the matter is moot because Mr. Ramizi's requests for relief cannot provide him with his desired

goal at this time. However, in my view, the Respondent’s concern about ineffectiveness of remedy is conceptually and practically distinct from mootness.

[emphasis added]

[15] At para. 31 of *Ramizi*, the court advises a cautionary approach to limiting review on the basis of an ineffective remedy:

[31] In public law, there is a public interest in identifying unfair or unreasonable decisions made by public authorities. In this sense, the public is an interested party to a decision made by a public authority. The potential ability of public decision makers to remove justiciable issues from a court’s scrutiny by raising or “manufacturing” mootness risks the good governance goal of judicial review.

[emphasis added]

[16] In the present circumstances, there was (is) significant public interest in the matters before the court. The parties are aware of the broad public interest that surrounded the events of September 14th. The early involvement of a proposed community-based intervenor attests to this. The court takes judicial notice of that public interest.

[17] In addition to mootness being a factor for consideration, counsel also recognized that a judicial review itself is an exercise of the court’s inherent discretion, regardless of the merits a case may present. As was noted by the Supreme Court of Canada in *Strickland v. Canada* (Attorney General), 2015 SCC 37:

[37] Judicial review by way of the old prerogative writs has always been understood to be discretionary. This means that even if the applicant makes out a case for review on the merits, the reviewing court has an overriding discretion to refuse relief:

(see also Petrie, J. in *McConnell Transport Ltd. v. Minister of Justice and Public Safety of New Brunswick*, 2020 NBKB 051 para. 18)

[18] David J. Mullan's text, *Administrative Law*, (2001, Irwin Law Inc.) notes, at p. 482, that the scarcity of judicial resources is a matter for consideration:

Among the interests at stake is that of ensuring the integrity of the judicial process by not subjecting its scarce resources to proceedings that are hypothetical, no longer of significance, or which serve no useful purpose.

[19] Similarly, in *Borowski* at p. 360, the Court wrote:

The concern for judicial economy as a factor in the decision not to hear moot cases will be answered if the special circumstances of the case make it worthwhile to apply scarce judicial resources to resolve it.

[20] When all is said and done and, whether the matters are examined through the lens of mootness or the lens of the court's inherent jurisdiction on matters of judicial review, the disposition of the present Motions will depend on the court's willingness to exercise its discretion to hear either of the underlying Applications on their merits. The exercise of that discretion must be undertaken judiciously. In *His Majesty in Right of the Province of New Brunswick, as represented by the New Brunswick Liquor Corporation, operating as Alcool NB Liquor v. Canadian Union of Public Employees, Local 963 et al*, 2023 NBCA 55, the Court, at para. 46, adopted a summary of the factors for consideration as authored by now Justice Lorne Sossin, when an exercise of discretion is called for:

[46] Lorne M. Sossin summed up *Borowski* as follows:

Sopinka J. set out a framework for the exercise of judicial discretion in relation to mootness. First, the Court must decide if the case is moot, in the sense that there is no longer a live dispute between the parties (usually due to a change in the factual or legal circumstances of a case). If the case is held to be moot, the Court must next consider whether it should nevertheless exercise its discretion to hear the case. Sopinka J. discussed three factors the

Court should consider in this second aspect of the test:

- (1) whether the parties retain an adversarial stake in the issues raised by the case;
- (2) whether, in the circumstances, the issues are important enough to justify the judicial resources necessary to decide the case (in the sense that the decision will have some practical effect on the rights of the parties); and
- (3) whether the Court would be departing from its traditional role in adjudicating disputes if it decided the case. [pp. 115-116]

[21] To repeat, whether the court exercises the discretion to hear a matter of judicial review (as per *Strickland*) or does so through the lens of a mootness assessment, it is the judicious exercise of discretion that is the pathway toward any consideration of the merits. In the present case, I accept that there remain, in the matters identified in the revocation judicial review, issues that can properly be seen as adversarial in nature. In revoking the salvage dealers license, AIM was possibly deprived (whether properly so or not) of certain opportunities that may attach to businesses which hold such a license (at least for the balance of the term). I acknowledge the same can be said relative to the approval to operate.

[22] I am of the view that, even though the term of the salvage dealers license had expired, it warrants the expenditure of judicial resources to answer the questions raised in that judicial review. As I have noted above, the circumstances of this case have been the subject of significant public interest. But I am guided primarily by the concern that, by not accepting to hear the revocation judicial review, it may be interpreted as lending support to the notion that a Minister may interfere with the interests of a license holder during the operative term of the license and that there could be no recourse to judicial review simply because the term has expired. I do not presume that to have been the case presently, but the expiry of the term of the license should not, in my view and in these circumstances, be solely determinative. In other words, I do not find the revocation Application to be moot and, even if I did, I would exercise my discretion and allow it to proceed on the merits.

[23] The Motion with respect to the salvage dealers license revocation is dismissed (FM-99-2025). The judicial review application is permitted to continue.

[24] Consideration of the judicial review of the suspension of the approval to operate (FM-98-2025) is to be resolved differently. Relying again on the description of the September 14th incident set out above, it is difficult to picture at first glance and without the benefit of argument, a path to convincing a court that the suspension of the approval to operate under the conditions, as they were then understood to be, was contrary to the applicable standard for review. As noted, there is also a pending judicial review of a request by AIM to renew the approval to operate (FM-100-2025) – a request which the Minister denied on May 9, 2024. Even if AIM was successful on the merits of suspension Application, that approval did expire, and a useful remedy would be elusive. In my view, the issues raised by the refusal to renew the approval to operate in FM-100-2025 have, as a consequence of the passage of time, eclipsed the issues raised by the original suspension.

[25] No issue of mootness has been raised with regard to FM-100-2025. The question of whether or not the refusal to approve a new license to operate can withstand judicial scrutiny is a live question. That question does involve, at least collaterally, issues and questions that have evolved in the aftermath of the September 14th incident and the immediate suspension of the approval to operate.

[26] In other words, where the facts and issues of the suspension decision stop, and the facts and issues around the refusal to issue a new approval begin, may not be clear cut. This recognizes that there may well be an overlap in the facts and issues pertinent to both the suspension and the refusal to approve decisions. In my view, the best use of scarce judicial resources is to focus on FM-100-2025, where no mootness challenge is raised. In the event AIM may think necessary, I would consider any amendment to FM-100-2025 that ensures that the refusal to renew the approval to operate is not assessed without considering the circumstances surrounding the suspension. I do not intend to suggest any amendment is necessary – only to be alert to counsels' views if necessary.

[27] The Motion seeking to dismiss the judicial review of the suspension decision is granted (FM-98-2025).

[28] I would entertain, in writing to the Clerk of the Court, any suggestion as to the order in which the remaining two Applications for judicial review be heard. The Court is prepared to convene a conference call should there not be agreement on which one is to be heard first. Given the mixed result of these two motions, I make no order on costs.

Justice E. Thomas Christie
Court of King's Bench of
New Brunswick, Trial
Division