

Federal Court



Cour fédérale

Date: 20250106

Docket: T-1774-24

Citation: 2025 FC 31

Ottawa, Ontario, January 6, 2025

PRESENT: The Honourable Madam Justice Kane

BETWEEN:

BAHAA M. IZZ

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Applicant, Bahaa M. Izz [Mr. Izz], brings this motion, dated December 9, 2024, in writing, pursuant to Rule 369 of the *Federal Courts Rules* [the Rules].

I. Background

A. *The underlying Application*

[2] The motion is brought in the context of the underlying Application in T-1774-24.

Mr. Izz's Notice of Application in T-1774-24, filed on July 15, 2024, states that the Application is filed pursuant to subsection 24(1) of the *Canadian Charter of Rights and Freedoms* [the *Charter*]. He alleges that "threat reduction measures" were taken against him, which he reported to the police; that the release of information he requested through the access to information and privacy process [ATIP] was obstructed; and, that alternative measures (pursuant to the *Criminal Code of Canada* [*Criminal Code*] were taken against him without his consent. Mr. Izz does not provide any details of his allegations. Mr. Izz claims that these alleged actions have deprived him of his *Charter* rights, which he describes as including "enjoying his legitimate rights in pursuaing [*sic*] and advancing lawful causes by his side (e.g. continuing his graduate education, having personal enrichment, capitalizing on his achievements, enjoying his well being and advancing and improving his life quality on almost all levels and aspect [*sic*], immigrating to Canada, becoming a Canadian citizen and enjoy [*sic*] democratic rights)". He states that the relief he seeks will be "specified in separate judicial motions that can provide relevant details regarding their justifications and connections to the rights of the Applicant as per the Charter".

B. *The Related Application for Judicial Review in T-1088-24*

[3] Mr. Izz's Application for Judicial Review in T-1088-24 appears to challenge, among other things, the findings of the Office of the Privacy Commissioner [OPC] regarding a request for information made by Mr. Izz. The Court uses the terminology "appear to be" because Mr. Izz's proceedings lack clarity. As noted in several Directions and Orders of the Court in T-1088-24, there is a lack of clarity in that application and in the relief sought. Mr. Izz has refused to attend Case Management Conferences in both T-1088-24 and in T-1774-24, which were

proposed by the Court to attempt to clarify the relief he seeks and the process and timeline for the proceedings.

[4] The Application for Judicial Review in T-1088-24 was stayed by Order of the Court dated August 13, 2024 (2024 FC 1258) upon motion by Mr. Izz, pending the determination of Mr. Izz’s Application in T-1774-24, given that it appears to seek similar relief and raises similar — albeit unclear — allegations.

II. The Motion

[5] Mr. Izz styles this Motion as a “Motion to attack irregularity pursuant to Rule 58 of the *Federal Courts Rules*”. He states the grounds of the motion as Rules 369, 58, 55 and 307 of the *Rules*, the *Canadian Charter of Rights and Freedoms*, and paragraph 717 (1) (c) of the *Criminal Code*. (The Court notes that section 717 of the *Criminal Code* permits alternative measures to the prosecution of a criminal offence, where an alternative measures program has been approved by the Provincial Attorney General of the jurisdiction where the alleged offence occurred and where other requirements are met. The Court further notes that it has no jurisdiction over criminal offences. Moreover, there is no evidence on the record that Mr. Izz has been charged with any criminal offence.)

[6] Mr. Izz attaches seven exhibits to his Motion Record, including demands to the Minister of Justice and Attorney General of Canada for the prosecution of “authorized measures of state actors that harm the health of individuals in Canada”, “using cyber manipulations”, “influencing law society and civil society by authorized capacity”, and “authorized practice of collective false

accusation or collective perjury”. These exhibits do not make any sense and do not have any relevance to the underlying Application or to the current motion.

[7] Mr. Izz also attaches two reports from the OPC in response to his complaints that the National Security and Intelligence Review Agency [NSIRA] and the Canadian Border Service Agency [CBSA] did not provide him with the personal information requested pursuant to the *Privacy Act*, RSC 1985, c. P-21. The OPC examined the validity of the statutory exemptions claimed by both NSIRA and CBSA and ultimately NSIRA and CBSA provided additional information to Mr. Izz. The OPC found the complaints to be resolved.

[8] The Order sought by Mr. Izz in the current motion is to compel the Respondent to disclose, by way of an affidavit, “Measures and Allegations report as per the description, terms and conditions of the Appendix A”. Appendix A makes little sense, and appears to be based on Mr. Izz’s speculation that certain measures have been taken against him (although there is no indication of by whom or when), including “threat reduction measures”, “national defence measures”, “performance bonds”, and “investigative measures”.

[9] The thrust of the current motion appears to be that the Court should order the Respondent to provide documents to Mr. Izz to provide him with some evidence to advance his claims that his *Charter* rights have been infringed. Mr. Izz takes the position that the Respondent is required to file an affidavit and exhibits and that the Respondent has breached Rule 307 by not doing so. Mr. Izz also seeks to dictate the contents of the Respondent’s affidavit.

III. The Motion is Dismissed

[10] Rule 307 states:

<p>Within 30 days after service of the applicant’s affidavits, a respondent shall serve its supporting affidavits and documentary exhibits and shall file proof of service. The affidavits and exhibits are deemed to be filed when the proof of service is filed in the Registry.</p>	<p>Dans les trente jours suivant la signification des affidavits du demandeur, le défendeur signifie les affidavits et pièces documentaires qu’il entend utiliser à l’appui de sa position et dépose la preuve de signification. Ces affidavits et pièces sont dès lors réputés avoir été déposés au greffe.</p>
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[11] Rule 307 sets out the timeline for the filing of a respondent’s affidavits and exhibits — if any — within 30 days following the filing of the applicant’s affidavits. Rule 307 does not require that a respondent file an affidavit or exhibits (*Merck Frosst Can. Inc. v Canada (Minister of National Health and Welfare)*, (1994 55 CPR (3d) 302; 169 NR 342 (Fed CA); leave to the Supreme Court of Canada refused); *Oleynik v Canada (Attorney General)* 2018 FC 737, at para 81).

[12] The Respondent’s choice to not file an affidavit or exhibits is not an infringement of Rule 307 or of any other Rule. Mr. Izz’s suggestion that the Court should vary the Rules, pursuant to Rule 55, to require the Respondent to file an affidavit, is without merit. Mr. Izz’s submission that “the interests of justice dictates having a legal test for dispensing on complying with the federal court rules [*sic*] as per Rule 55 of the federal court rules [*sic*]” is also without merit. As noted, there are no special circumstances to justify dispensing with or varying the Rules. It is not the role of the Respondent to supply Mr. Izz with evidence that Mr. Izz speculates may be in the

possession of the Respondent in order to support Mr. Izz's unclear allegations. Moreover, it is not the Court's role to dictate the Respondent's approach to litigation. As a result, Mr. Izz's motion challenging an "irregularity" of the Respondent, pursuant to Rule 58, fails: there is no "irregularity".

[13] Moreover, as repeatedly explained, Mr. Izz cannot demand that the Respondent produce any documents or information that are subject to the Court's determination whether such documents should be provided, as this appears to be the subject of the Application for Judicial Review in T-1088-24.

[14] The Court has attempted, by way of Directions, to explain to Mr. Izz that the Respondent is under no obligation to file an affidavit. The Court and the Designated Registry of the Court have also engaged in extensive correspondence with Mr. Izz, largely in response to Mr. Izz's extensive correspondence, to provide some guidance about the Court's process and Rules. However, Mr. Izz persists in making similar demands, not grounded in the law or the Rules.

[15] For example, on August 21, 2024, the Court issued the following Direction in response to Mr. Izz's correspondence, in which he attempted to dictate the process to be followed by the Court and stated his refusal to attend a Case Management Conference:

Further to the Court's Direction dated August 13, 2024 stating that a Case Management Conference (CMC) would be held on August 19, 2024 or August 27, 2024; and noting the Applicant's letter to the Court sent on Sunday, August 18, 2024, stating, among other things, the Applicant's objection to the Court's intention to convene a CMC and, instead, requesting that the Court communicate with the Applicant in writing, including setting out questions that the Court would otherwise raise at a CMC; and,

noting the Respondent's letter, dated August 19, 2024 which explains the purpose and benefits of convening a CMC and indicates that the Respondent will attend the CMC on August 27, 2024; the Court directs as follows;

1. As previously stated, a CMC does not determine the merits of any application or motion and does not consider arguments; a CMC is for the purpose of managing the litigation.
2. If the Applicant does not intend to attend the CMC on August 27, 2024, he should clearly advise the Court so that judicial resources are not wasted. However, no alternative to the CMC will be provided.
3. The Court will not set out questions in writing to the Applicant as he requests.
4. The Applicant cannot direct how the Respondent or the Court will conduct the litigation.
5. The Applicant shall follow the *Federal Courts Rules* and Consolidated Practice Directions with respect to his pursuit of this Application or other matters.
6. The Court determines Applications and Motions that are within the Court's jurisdiction and are justiciable and comply with the *Federal Courts Rules*.
7. The Court's Registry cannot respond to every inquiry, suggestion or demand from the Applicant.

[16] On September 18, 2024, the Court issued the following Direction in response to Mr. Izz's correspondence, which among other things, alleges that the Respondent failed to comply with Rule 307 because the Respondent did not file an affidavit by September 13, 2024:

The Court has reviewed the letter sent by the Applicant on September 16, 2024 and notes the following: the Respondent is not obliged to file an affidavit and may chose not do to so; the Applicant has filed an affidavit which only attaches several exhibits; the Applicant may be cross- examined on his affidavit; following any cross-examination, the Applicant is required to file an Application Record in accordance with Rule 309; and, as the Respondent noted in their letter of August 19, 2024, the Applicant

bears the burden of proof of his allegations of any breach of the Charter.

The Court further notes that the Applicant's request to the Court to release certain documents to the Applicant (which may be the same documents the Applicant previously sought in other proceedings and through Access to Information requests) is improper and is denied; the Applicant cannot simply request the very documents that he has previously sought from other sources and which are the subject of one or more Applications for Judicial Review; the Court reiterates that the Applicant bears the burden of establishing that he has raised justiciable issues and can establish his allegations.

The Applicant's request that his Applicant proceed on an *ex parte* basis (without the Respondent) is denied; the Respondent has filed a Notice of Appearance and intends to participate.

[Emphasis added.]

[17] On October 24, 2024 the Court issued the following Direction in response to further correspondence by Mr. Izz:

The Court acknowledges receipt of email correspondence from the Applicant dated October 16, 17, 19 and 23, 2024. The Court directs the Applicant to review the Court's previous Directions, which note, among other things, that the Court determines motions and applications. The Court will determine the Applicant's Application in T- 1774-24 in accordance with the relevant statutory provisions and the Federal Court Rules. The Applicant bears the burden of establishing his allegations.

With respect to the Applicant's request that I, and other judges, recuse themselves from his proceedings, there is no basis for such a request. The Applicant appears to suggest that unless I agree to his proposals and issue certain orders, including to order that the Respondent provide the documents that he has previously sought from other sources and which may be the subject of one or more Applications for Judicial Review, I should not have any further role in this litigation.

The Court reiterates that it determines motions and applications in accordance with law and the Federal Courts Rules. The Court emphasizes that a Case Management Conference [CMC] is essential to better manage this litigation. The Applicant's

submissions lack clarity. A CMC would be in the Applicant's best interests to both establish the next steps for the litigation and provide an opportunity for the Applicant to clarify the core issues. The Court is available to convene a CMC on November 5 or 7, 2024.

[Emphasis added.]

[18] The Court notes that despite repeated proposals and dates, Mr. Izz refuses to participate in a Case Management Conference.

[19] The Respondent characterizes Mr. Izz's current motion is an attempt to circumvent the Court's oral Directions and as an abuse of process. The Respondent notes that this Court previously dealt with Mr. Izz's demand that the Court order the Respondent to file an affidavit attaching documents and excluding the Respondent from previous proceedings. The Respondent submits that the Court's Directions have responded to that request and addresses the same demands that Mr. Izz makes in his current motion. The Court agrees.

[20] The Court notes that Mr. Izz's repeated demands, including for expedited responses to his correspondence and to this motion, his ultimatums to the Respondent if the Respondent does not agree to his demands, his demands to the Court regarding the process to be followed, and his threats to the Court that he will pursue appeals or make complaints to oversight bodies, is not the appropriate conduct to resolve his Applications in T-1774-24 or T-1088-23 or his motions. While Mr. Izz may pursue any legitimate relief to which he may be entitled, the Court is not influenced by his stated intentions and other tactics. The Court regards Mr. Izz's conduct as uninformed and abusive.

[21] Mr. Izz's motion seeks to yet again demand the same information he has demanded through his previous correspondence and for which the Court has issued clear Directions, now reiterated in this Order.

[22] The Court remains ready to determine this Application in accordance with the law and the Rules, but again notes that the onus is on Mr. Izz to better articulate the relief he seeks, the grounds for such relief and the law he relies on to do so. The next step, given that the Respondent has not filed an affidavit, is for Mr. Izz to prepare his Application Record in accordance with Rule 309.

[23] The Court reiterates that it is only in Mr. Izz's best interest to attend a Case Management Conference to clarify his proceedings and the next steps.

[24] To be crystal clear, the Court finds as follows:

1. Mr. Izz's motion is dismissed.
2. The Respondent is not required to file an affidavit and exhibits. Rule 307 establishes the time line for the filing of a respondent's affidavits and exhibits but does not impose any obligation on a respondent to do so.
3. The Respondent has not failed to comply with the Rules and there is no "irregularity" to be addressed.

4. Given that Mr. Izz is not successful in this motion and given his conduct as described above, the Court exercises its discretion pursuant to Rule 400 and orders costs against Mr. Izz in the amount of \$1500.

ORDER in file T-1774-24

THIS COURT ORDERS that:

1. The motion is dismissed.
2. The Applicant shall pay the Respondent a lump sum award of costs in the amount of \$1500.

"Catherine M. Kane"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1774-24

STYLE OF CAUSE: BAHAA M. IZZ v THE ATTORNEY GENERAL OF
CANADA

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO
RULE 369 OF THE *FEDERAL COURTS RULES***

ORDER: KANE J.

DATED: JANUARY 6, 2025

WRITTEN REPRESENTATIONS BY:

Bahaa M. Izz

FOR THE APPLICANT

Alexandra Scott
Charles Barnes

FOR THE RESPONDENT

SOLICITORS OF RECORD:

None

FOR THE APPLICANT

Attorney General of Canada
Vancouver, British Columbia

FOR THE RESPONDENT