Federal Court Cour fédérale

Date: 20250707

Docket: T-691-25

Citation: 2025 FC 1202

Ottawa, Ontario, July 7, 2025

PRESENT: The Hon Mr. Justice Henry S. Brown

BETWEEN:

CAMERON MACDONALD

Applicant

and

THE MINISTER OF PUBLIC SAFETY OF CANADA

Respondent

ORDER AND REASONS

I. Nature of the matter

[1] This is a motion for an interlocutory injunction brought by the Applicant against the Respondent under Rule 373 of the *Federal Courts Rules*, SOR/98-106 [*Federal Courts Rules*]. The Applicant seeks an Order preventing the Respondent from distributing or disseminating a draft final Professional Standards Investigation Report [Report] until the disposition of his

underlying Application for Judicial Review of the Report [Application]. He also seeks an Order relieving him from compliance with Rule 373(2) re posting an undertaking for damages.

[2] For the reasons below, the motion will be granted.

II. Facts

[3] The underlying facts in this case are heavily contested. The parties dispute the timeline, purpose, merits, and procedural fairness of this investigation and Report. The Court makes no final determinations, but restates what it told the parties at the hearing, namely that the allegations each side makes against the other are most serious. They deserve a full hearing. That is not possible on this motion.

A. *The Applicant and the investigation against him*

[4] The Applicant is a public servant. He previously worked at the executive level at the Canadian Border Services Agency [CBSA] in the Border Technologies and Innovation Directorate. He left the CBSA on May 5, 2021 and is now the Assistant Deputy Minister at Health Canada.

[5] In his role at the CBSA, the Applicant was involved in developing the ArriveCAN app, which was developed during the pandemic to “streamline customs and COVID-19 data collection” (Applicant’s Affidavit at para 19). The Applicant attests he was not involved in the

procurement process (at para 15). This is contested by the Respondent (Respondent's Memorandum at para 6).

[6] The Applicant says on or about January 18, 2021, the CBSA engaged "Botler AI," a small technology company, to prepare a feasibility study for a digital application to report workplace harassment.

[7] On October 17, 2022, the House of Commons Standing Committee on Government Operations and Estimates [OGGO] launched an inquiry into the development and costs of ArriveCAN app.

[8] On November 24, 2022, Botler AI released a report alleging serious misconduct in CBSA leadership and beyond, including by the Applicant.

[9] On October 4, 2023, Botler AI's allegations were made public by the Globe and Mail. CBSA leadership and the Applicant were called to testify before the OGGO (a Parliamentary committee) soon afterward (a fact I admit from the newspaper as it does not go to truth of contents).

[10] The Applicant says CBSA took no action against him regarding these allegations until they became public and he testified before OGGO on November 7, 2023 (Applicant's Memorandum at para 15, another admitted fact). Rather, he says the investigation was opened on

November 17, 2023 and he was advised for the first time that he was under investigation on November 27, 2023 (Applicant's Public Affidavit at para 47). (a Parliamentary committee)

[11] However, the Director General of Wellness, Labour Relations, and Compensation at the CBSA attests that the CBSA launched an internal professional standards investigation regarding the Applicant's workplace conduct in Fall 2022 — presumably following Botler AI's report — which was moved from the preliminary phase into the investigation phase on November 17, 2023 (Public Affidavit of J Nunez at para 23).

[12] The Applicant testified before OGGO on November 7, 2023 (an admitted fact). The following day, he went on extended medical leave (Applicant's Public Affidavit at para 42).

[13] On December 19, 2023, the CBSA shared a document called the Preliminary Statement of Facts [PSF] with his current employer, Health Canada. The Applicant says he was not informed of the existence of the PSF nor was he given an opportunity to respond to it prior to its release – this seems to have been the case. However, as will be noted below, his application for judicial review and his subsequent grievance of the PSF were both dismissed on the basis of prematurity.

[14] On January 5, 2024, the Applicant's security clearance was revoked and he was suspended without pay due to the allegations against him in the PSF (Applicant's Public Affidavit at para 52). These actions were again taken without notice to him or any opportunity to

respond. It appears from the record that he successfully grieved these suspensions (Applicant's Public Affidavit at para 6).

[15] The CBSA prepared the draft Report and shared it with the Applicant on February 11, 2025. The contents of the Report and other information related to the investigation are sealed pursuant to a Confidentiality Order dated May 8, 2025 per Associate Judge Molgat:

> 1. For the purpose of this Order the following is designated as Confidential Information and may be filed and treated as confidential in accordance with this Order:
>
> a) The Investigation Mandate for Professional Standards Investigation PS-23-0170, signed by Mari-France Leduc and Michel Lafleur on November 17, 2023;
>
> b) The Investigation Plan for Professional Standards Investigation PS-23-0170 signed by Mari-France Leduc and Michel Lafleur on November 20, 2023, and November 21, 2023, respectively;
>
> c) The written notices provided to the Applicant regarding Professional Standards Investigation PS-23-0170, dated November 27, 2023;
>
> d) The Preliminary Statement of Facts relating to the Applicant, signed December 18, 2023; and
>
> e) The draft investigation report, including its attached appendices and exhibits, under Professional Standards Investigation PS-23-0170, provided to the Applicant on February 11, 2025.
>
> f) Any statement or information that is contained within items (a) through (e).
>
> …
>
> 6. The terms and conditions of use of Confidential Information and the maintenance of the confidentiality thereof during any hearing of this proceeding and any subsequent reasons for judgment thereon, shall be matters in the discretion of the Court seized of the matter.

[16] Through this motion, the Applicant seeks to prevent the Report from being distributed or disseminated until the disposition of his underlying Application. In this he follows the process determined by Justice Zinn.

B. *The underlying Application*

[17] On February 28, 2025, the Applicant brought a Notice of Application for judicial review of the decision to finalize and disseminate the Report. The Applicant was later granted leave to amend the Notice of Application "to seek judicial review of a grievance decision in the form attached to the June 13, 2025, letter" by Order dated June 17, 2025 per AJ Molgat. The Amended Notice of Application, dated June 17, 2025 [Amended Application], states:

> THIS IS AN APPLICATION FOR JUDICIAL REVIEW IN RESPECT of the decision to ~~finalize and~~ disseminate the Professional Standards Investigation Report and its annexes (the "PSIR") prepared by the Canada Border Services Agency (the "CBSA"), received by the Applicant on February 11, 2025, and the decision of the Vice-President, Human Resources, Holly Flowers-Code in her capacity as the decision-maker at the final level of the grievance process under the Federal Public Sector Labour Relations Act.
>
> [Emphasis in original]

[18] The Applicant alleges the investigative process leading to the Report was procedurally unfair leading to a "fundamentally flawed and prejudicial" Report. Further, he says the Report itself is unreasonable. His Amended Application seeks the following:

> 1. An Order enjoining the Respondent and the CBSA from ~~finalizing and~~ disseminating the [Report] in any form, except to any party that, pursuant to a request, is legally entitled to it, pending the outcome of this judicial review application and/or the completion of an independent investigation pursuant to paragraph 2;

> 2. An Order requiring the CBSA to retain an independent third-party investigator to conduct the investigation in accordance with the requirements of procedural fairness and natural justice;
>
> 3. An Order permitting an expedited scheduling and hearing of this Application;
>
> 4. An Order granting an interim and permanent sealing order pursuant to Rule 51 of the *Federal Court[s] Rules,* sealing any materials that contain or reference the [Report] as disclosure of the [Report] within the Application will cause irreparable harm due to the sensitive and confidential nature of the information contained therein;
>
> 5. An Order granting the Applicant his costs of this Application;
>
> 6. In the alternative to paragraph 5 above, if this Application is dismissed, an Order that the Applicant shall not be required to pay the costs of the Respondent pursuant to Rule 400 of the *Federal Court[s] Rules*; and
>
> 7. Such further and other relief as counsel may advise and this Honourable Court may permit.
>
> [Emphasis in original]

[19] As will be outlined below, the present motion does not determine the merits of the Applicant's allegations of procedural unfairness or unreasonableness. It only examines whether the Applicant has met the test for an interlocutory injunction and related relief from an undertaking.

C. *Procedural history*

[20] In *Utano v Canada (Public Safety)*, 2024 FC 805 [*Utano*], brought by the Applicant and another co-applicant, Justice Zinn considered a motion for interlocutory relief and a motion to strike an application for judicial review of the earlier PSF, a preliminary step in this continuing

process. The Court granted the motion to strike and therefore found the motion for an injunction moot.

[21] However, Justice Zinn noted (in non-binding *obiter dictum*) he "would not have granted any of the requested relief" (at para 83) in the circumstances of the case before him. Among other things, Justice Zinn felt the applicants failed to establish irreparable harm because they "only provided evidence of alleged harm owing to past events with no clear or convincing evidence that this harm will continue in the absence of the requested injunctions" (para 76).

[22] The Applicant did not appeal this decision, which as noted related to a draft statement of facts. This case is of course very different and concerns the draft final Report prepared after the PSF.

[23] Following and in accordance with the Federal Court's decision in *Utano,* the Applicant filed a grievance against the CBSA, seeking an end to the administrative investigation, and alleging the process was biased and procedurally unfair. This grievance was denied on the basis of prematurity.

[24] The Applicant referred the final level grievance decision to adjudication before the Federal Public Sector Labour Relations and Employment Board [Board] under s 209(1)(b) of the *Federal Public Sector Labour Relations Act*, SC 2003, c 22, s 2. The Respondent says later in this process, an agreement was reached to have the grievance withdrawn from the Board and the

CBSA issued an amended grievance response on May 6, 2025, in accordance with that agreement (Respondent's Memorandum at paras 21-24).

[25] On February 27, 2025, the Applicant filed a second grievance concerning the investigation process generally, including on this occasion the contents of the draft final Report, and pre-emptively grieving CBSA sharing the Report with any other parties, including his employer.

[26] On May 9, 2025, the Respondent filed a motion to strike the Application on the basis of prematurity. This motion was settled on June 17, 2025 (days before this motion was heard) alongside the Amended Application dated the same because the Applicant received a final-level decision dismissing his grievance of the Report on May 30, 2025.

[27] Some of the Respondent's evidence adduced for the motion to strike was added to the record for this motion, by Order dated June 17, 2025 per AJ Molgat at paragraph 4:

> 4. For the purposes of the Applicant's injunction motion, and in accordance with Rule 364 of the *Federal Courts Rules*, the Public and Confidential Affidavits of Julie Nunez dated May 8, 2025, and the cross-examination transcript of Mr. Macdonald dated June 13, 2025, filed on the Minister's motion to strike, shall form part of the record on the Applicant's injunction motion.

III. Issues

[28] The Applicant says the issues are:

1. Is the test to issue an injunction met?

2. Is the Applicant required to provide an undertaking pursuant to Rule 373(2)?

[29] The Respondent says the issues are:

1. Whether portions of the Applicants affidavit evidence containing information protected by Parliamentary Privilege, or is otherwise inadmissible, should be struck?
2. Whether the Applicant meets the test for injunctive relief?
3. In the alternative, whether this motion constitutes an abuse of the Court's processes?
4. In the further alternative, whether the Applicant is estopped from seeking an injunction?
5. Whether the Applicant should be relieved from compliance with Rule 373(2)?

[30] Respectfully, I would characterize the primary issues as:

1. Is the three-part test for an interlocutory injunction under Rule 373(1) met?
2. Should the Applicant be relieved from compliance with Rule 373(2)?

IV. Relevant rules

[31] Rule 373 concerns interim and interlocutory injunctions. It states:

Interim and Interlocutory Injunctions	**Injonctions interlocutoires et provisoires**
Availability	**Injonction interlocutoire**
373 (1) On motion, a judge may grant an interlocutory injunction.	**373 (1)** Un juge peut accorder une injonction interlocutoire sur requête.

Undertaking to abide by order	**Engagement**
(2) Unless a judge orders otherwise, a party bringing a motion for an interlocutory injunction shall undertake to abide by any order concerning damages caused by the granting or extension of the injunction.	**(2)** Sauf ordonnance contraire du juge, la partie qui présente une requête pour l'obtention d'une injonction interlocutoire s'engage à se conformer à toute ordonnance concernant les dommages-intérêts découlant de la délivrance ou de la prolongation de l'injonction

V. Submissions and analysis

[32] The Applicant submits he meets the test for an interlocutory injunction under Rule 373(1) and that relief from Rule 373(2) is just in the circumstances.

[33] The Respondent submits the Applicant has not met his burden to establish the test for an injunction. In the alternative, the Respondent submits this motion is an abuse of process, or, in the further alternative, the Applicant is estopped from bringing this motion.

A. *Preliminary issue: Admissibility of Affidavit*

[34] Shortly before the hearing of this Motion and pursuant to the Order of AJ Molgat dated June 17, 2025, the Applicant filed Reply submissions and the cross-examination transcript of J. Nunez, the Respondent's affiant. Included in the Applicant's Reply Record was the Affidavit of C. Zersch [Zersch Affidavit] and two attached exhibits: A) the final-level response to the Applicant's grievance of the Report and investigation, and B) the Treasury Board Secretariat *Handbook on Administrative Investigations into Misconduct.*

[35] The Respondent submitted at the hearing the Zersch Affidavit was improperly filed, citing Rule 84(2) of the *Federal Courts Rules*:

Filing of affidavit after cross-examination	**Dépôt d'un affidavit après le contre-interrogatoire**
(2) A party who has cross-examined the deponent of an affidavit filed in a motion or application may not subsequently file an affidavit in that motion or application, except with the consent of all other parties or with leave of the Court.	**(2)** La partie qui a contre-interrogé l'auteur d'un affidavit déposé dans le cadre d'une requête ou d'une demande ne peut par la suite déposer un affidavit dans le cadre de celle-ci, sauf avec le consentement des autres parties ou l'autorisation de la Cour.

[36] Rule 312(a) says a party may file additional affidavits with leave of the Court:

Additional steps	**Dossier complémentaire**
312 With leave of the Court, a party may	**312** Une partie peut, avec l'autorisation de la Cour :
(a) file affidavits additional to those provided for in rules 306 and 307;	**a)** déposer des affidavits complémentaires en plus de ceux visés aux règles 306 et 307;

[37] The Respondent submits this evidence does not meet the test for leave to file additional affidavits, per the Federal Court of Appeal in *Forest Ethics Advocacy Association v National Energy Board*, 2014 FCA 88 at paragraphs 4-6:

> [4] At the outset, in order to obtain an order under Rule 312 the applicants must satisfy two preliminary requirements:
>
> > (1) The evidence must be admissible on the application for judicial review. As is well known, normally the record before the reviewing court consists of the material that was before the decision-

> maker. There are exceptions to this. See *Gitxsan Treaty Society v. Hospital Employees' Union*, 1999 CanLII 7628 (FCA), [20 00] 1 F.C. 135 at pages 144-45 (C.A.); *Association of Universities and Colleges of Canada v. Canadian Copyright Licensing Agency (Access Copyright)*, 2012 FCA 22.
>
> (2) The evidence must be relevant to an issue that is properly before the reviewing court. For example, certain issues may not be able to be raised for the first time on judicial review: *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61 (CanLII), [2011] 3 S.C.R. 654.

[5] Assuming the applicants establish these two preliminary requirements, they must convince the Court that it should exercise its discretion in favour of granting the order under Rule 312. The Court exercises its discretion on the basis of the evidence before it and proper principles.

[6] In *Holy Alpha and Omega Church of Toronto v. Canada (Attorney General)*, 2009 FCA 101 at paragraph 2, this Court set out the principles that guide its discretion under Rule 312. It set out certain questions relevant to whether the granting of an order under Rule 312 is in the interests of justice:

> (a) Was the evidence sought to be adduced available when the party filed its affidavits under Rule 306 or 308, as the case may be, or could it have been available with the exercise of due diligence?
>
> (b) Will the evidence assist the Court, in the sense that it is relevant to an issue to be determined and sufficiently probative that it could affect the result?
>
> (c) Will the evidence cause substantial or serious prejudice to the other party?

[38] The Respondent submits the Applicant has not satisfied the two preliminary requirements (evidence must be admissible and evidence must be relevant to an issue properly before the

Court). In the alternative, the Respondent submits the Applicant has not established the granting of such an order is in the interests of justice. The Respondent points out that the issue before the Court is an injunction, not the merits of the underlying judicial review application.

[39] The Applicant submitted at the hearing that both exhibits are admissible and relevant. He submits neither were initially available: the final-level grievance response was received on May 30, 2025 and the Treasury Board *Handbook* only came to his attention after the cross-examination of J Nunez was completed and was difficult to gain possession of. He says excluding this evidence "would undermine the Court's ability to understand motive, institutional context, and retaliation," each presumably going to the serious issue step of the test for an interlocutory injunction.

[40] I agree on both points with the Applicant, and would only add that material such as the *Handbook* should be readily found on the Board's website as I was unable to see an interest in keeping it secret here or elsewhere.

B. *Preliminary issue: Admissibility of evidence*

[41] The Respondent's second point is that certain portions of the Applicant's Affidavit and attached exhibits are inadmissible because of parliamentary privilege and/or hearsay evidence rules.

[42] The Applicant submits parliamentary privilege does not apply in the case at bar and the pieces of evidence contested because hearsay is not being relied on for the truth of the contents.

(1) Parliamentary privilege

[43] The Respondent asks to strike the Applicant's references to witness testimony at the OGGO at paragraphs 30, 33, 45, 46, 54, 55, 56, 57, 58 (a), 69 (c) and 84 and, Exhibit Q, U and X of his Affidavit because they are protected by parliamentary privilege pertaining to freedom of speech.

[44] The Applicant submits parliamentary privilege does not apply and this evidence is admissible.

[45] This issue was raised in *Utano* but not explored because the evidence was excluded for other reasons (at paras 31-41).

[46] The Supreme Court of Canada defines parliamentary privilege in the Canadian context as "the sum of the privileges, immunities and powers enjoyed by the Senate, the House of Commons and provincial legislative assemblies, and by each member individually, without which they could not discharge their functions" (*Canada (House of Commons) v Vaid*, 2005 SCC 30 at para 2 [*Vaid*]). Parliamentary privilege "is one of the ways in which the fundamental constitutional separation of powers is respected" (at para 21).

[47] This Court per Associate Judge Ring recently summarized the nature and purpose of parliamentary privilege in *Hudson v Canada*, 2025 FC 485 [*Hudson*]:

> [26] At the federal level, parliamentary privilege has an express constitutional foundation in section 18 of the *Constitution Act,*

> *1867*: *Vaid* at paras 36 and 37. Through section 4 of the *Parliament of Canada Act*, RSC 1985, c P-1, the Senate and House of Commons and their members hold the privileges, immunities, and powers held by the U.K. House of Commons at the time of the passing of the *Constitution Act, 1867*, as well as those defined by statute, which cannot exceed those held by the Parliament at Westminster at the time the statute is enacted.
>
> [27] Individuals who appear before House of Commons and Senate committees may also benefit from parliamentary privilege in relation to their testimony: *Thompson Appeal* [*Thompson v Canada*, 2024 FC 1414] at para 19.
>
> [28] Section 5 of the *Parliament of Canada Act* mandates that the "privileges, immunities and powers" of Parliament are "part of the general and public law of Canada" and "shall" be judicially noticed by all courts in Canada: *Power* at para 147.
>
> [29] Parliamentary privilege serves an important role in maintaining the fundamental separation of powers between the legislative, executive, and judicial branches of government. It does this "[b]y shielding some areas of legislative activity from external review" and by granting "the legislative branch of government the autonomy it requires to perform its constitutional functions": *Chagnon v Syndicat de la fonction publique et parapublique du Québec*, 2018 SCC 39 at paras 1 and 21.

[48] As summarized by the Supreme Court of Canada in *Canada (Attorney General) v. Power*, 2024 SCC 26 [*Power*], there is a two-part test to determine parliamentary privilege. At the first step, a court examines whether the existence and scope of the claimed privilege has been authoritatively established under Canadian or British precedent. If so, the court must accept the privilege without further inquiry into the necessity of the privilege or the merits of its exercise:

> [149] Questions of parliamentary privilege at the federal level are subject to a two-step test. At the first step, a court asks whether the existence and scope of the claimed privilege has been authoritatively established under Canadian or British precedent, and if so, the court must accept the privilege without further inquiry into the necessity of the privilege or the merits of its exercise (*Vaid*, at paras. 37 and 39). If the proposed category has not been authoritatively established, then, at the second step, the

> court asks whether the privilege claimed is justified under a "necessity" test. The court must consider whether the activity is "so closely and directly connected" with the functions of the legislative assembly or its members that "outside interference would undermine the level of autonomy required to enable the assembly and its members to do their work with dignity and efficiency" (*Vaid*, at para. 46; see also *Chagnon*, at paras. 29 and 31). The party invoking parliamentary privilege bears the burden at both steps, but once the privilege is established the "propriety" of its exercise is beyond the review of the courts (*Vaid*, at paras. 5, 29(8) and 53; *Chagnon*, at para. 32).
>
> [Emphasis added]

[49] The Respondent submits transcripts of testimony before a parliamentary committee fall within an established category of parliamentary privilege, which applies to both parliamentarians and witnesses: *Royal Canadian Mounted Police v Canada (Commissioner, Royal Canadian Mounted Police)*, 2007 FC 564 at paragraph 63 [*RCMP*]; *Ontario v Rothmans et al*, 2014 ONSC 3382 [*Rothmans*].

[50] The Applicant submits parliamentary privilege is not absolute and it is for Courts to determine whether a claimed privilege is authoritatively established by precedent and whether its invocation is necessary for the functioning of the legislative body. In the case at bar, he submits parliamentary privilege bars the use of parliamentary statements to impeach, establish liability, or challenge parliamentary proceedings, but such statements are admissible to confirm uncontradicted facts or to prove the occurrence of parliamentary events: *Hudson* at paragraph 55; *Thompson v Canada*, 2024 FC 1414 at paragraph 13.

[51] I note, as the Respondent pointed out during the hearing, the cited paragraph from *Hudson* goes on to state:

> [55] The Plaintiff also submits that the Parliamentary Reports "are admissible to confirm uncontradicted facts including that the reports were published, what prompted the reports, what was reported, and what recommendations were given" (Reply, para 15). The Plaintiff is correct that parliamentary proceedings may be used for proof of uncontroversial facts: *Alberta v Canadian Copyright Licensing Agency (Access Copyright)*, 2024 FC 292 at para 131. In *Prebble*, the Judicial Committee of the Privy Council confirmed that parliamentary proceedings may be used "to prove the occurrence of parliamentary events"—that is, "to prove what was done and said in Parliament as a matter of history" (p. 418).
>
> [56] However, this exception to parliamentary privilege does not assist the Plaintiff here, having regard for her intended use of the Parliamentary Reports. The Plaintiff does not merely seek to establish the *existence* of the reports as a matter of historical fact. Instead, it is evident from her submissions that she intends to rely on the *content* of the reports to establish facts that will be in squarely in dispute on the certification motion, including the adequacy of alternative recourse mechanisms.
>
> [Emphasis added]

[52] The Respondent submits:

> 31. The extension of parliamentary privilege is not only to shield parliamentarians and witnesses from liability civilly but also to ensure that witnesses can speak fully and freely. This Court has struck affidavits in the context of judicial review applications where an affidavit refers to a report of a Standing Committee as doing so would be incompatible with parliamentary privilege [citing *Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181 paras 30 and 32; *Thompson v Canada*, 2024 FC 1752 at paras 19-27, especially at para 26]. In other words, regardless of whether a witness' statements made before a parliamentary committee are employed as an attempt to attract liability, those statements are not to be used in court proceedings. As held by Justice Tremblay-Lamer in *Gagliano v Canada* [2005 FC 576]:
>
> > [77] … I believe it is important to Canadian democracy that a witness be able to speak openly before a parliamentary committee. This objective will be accomplished if the witness does not fear, while he is testifying before this committee, that his

> words may subsequently be used to discredit him in another proceeding, **irrespective of whether or not it entails legal consequences**. He is more likely to speak with confidence if he is given the assurance that he is fully protected by privilege and cannot be interrogated subsequently [**emphasis added**].
>
> [Emphasis in original]

[53] In other words, as the Respondent stated at the hearing, motive is irrelevant to privilege — once a category of privilege is established it is absolute.

[54] In my respectful view, the application of parliamentary privilege has been authoritatively established to apply to witness testimony before a parliamentary committee and transcripts, and as such it is not necessary to proceed to the second step of the test. That the freedom of speech category of parliamentary privilege applies to witness testimony before a parliamentary committee is confirmed in: *Gagliano v Canada (Attorney General)*, 2005 FC 576 at paragraphs 72-97 [*Gagliano*]; *Canada* (*Deputy Commissioner, RCMP* at paragraph 63; *Hudson* at paragraph 27; *Rothmans* at paragraph 32, cited with approval in *Power* at paragraph 183; *Lavigne v Ontario (Attorney General)*, 2008 CanLII 89825 (ON SC) at paragraphs 23, cited in *Thompson* at paragraph 24; *Duffy v Canada (Senate)*, 2020 ONCA 536 at paragraph 64; *Guergis v Novak et al*, 2022 ONSC 3829, at paragraph 70. See also *Ontario (Premier) v Canada (Commissioner of the Public Order Emergency Commission)*, 2022 FC 1513.

[55] *RCMP* expands on *Gagliano* to summarize the purpose of parliamentary privilege applying to such testimony at paragraphs 63-65:

> [63]While I do not intend to fully canvass the reasons in *Gagliano*, it is worth emphasizing several key justifications for providing

> immunity to a parliamentary witness' testimony. First, although witnesses before a parliamentary committee are not Members of Parliament, they are not strangers to the House either. Rather they are guests who are afforded parliamentary privilege because, as with members, the privilege is necessary to ensure that they are able to speak openly, free from the fear that their words will be used against them in subsequent proceedings: *Gagliano*, at paragraph 77. This is related to the more general idea "that whatever is done or said in either House should not be liable to examination elsewhere": *Stockdale v. Hansard* (1839), 112 E.R. 1112 (Q.B.), at page 1191. Given the overriding importance of the House of Commons as "the grand inquest of the nation", it is fundamental that members and witnesses alike are not inhibited from stating fully and freely what they have to say: *Prebble v. Television New Zealand*, [1995] 1 A.C. 321 (P.C.).
>
> [64]Second, without the power to protect witnesses, Parliament's investigative function would be seriously compromised because witnesses would be less forthcoming: *Gagliano*, at paragraph 83.
>
> [65] Finally, if Parliament has reason to believe that a witness has deliberately misled the House, it is up to Parliament, and Parliament alone, to initiate proceedings and discipline such conduct. Misleading the House is contempt of the House punishable by the House: if a court or another entity was allowed to inquire into whether a member or a witness had misled the House, this could lead to exactly the type of conflict between two spheres of government that the wider principle of parliamentary privilege is designed to avoid. The courts would be trespassing on Parliament's jurisdiction: *Pepper v. Hart*, [1993] A.C. 593 (H.L.); *Hamilton v Al Fayed*, [2000] 2 All ER 224 (H.L.).
>
> [Emphasis added]

[56] See also *Thompson v Canada*, 2024 FC 1752 at paragraph 6, per Gagné J, and *Mobile Telesystems Public Joint Stock Company v Canada (Attorney General)*, 2025 FC 181 at paragraph 32, per Fothergill J, cited by the Respondent above, which both held it was incompatible with the jurisprudence on parliamentary privilege to adduce parliamentary proceedings as evidence on controversial facts or issues.

[57] I of course agree that parliamentary privilege does not prevent use of Parliamentary records to confirm uncontradicted facts or to prove the occurrence of parliamentary events, as previously settled in the jurisprudence cited above. Other than that, I respectfully agree with the Respondent that these references to OGGO testimony in the Applicant's Affidavit and attached Exhibits Q, U, and X should be struck from the record.

[58] The parties are to consult and agree on what may stay and what must be struck from these Exhibits, in accordance with these Reasons.

(2) Hearsay

[59] The Respondent further submits that paragraph 29 of the Applicant's Affidavit and attached Exhibits D, E, H, K, R, S, T, U, and V, which either reference or contain media articles reporting on Parliamentary committee hearings, should be struck because "[n]ewspaper articles are generally inadmissible as hearsay, and should not be admitted for the truth of their contents" (*AB v Canada (Citizenship and Immigration)*, 2024 FC 1755 at para 36, per Associate Judge Horne, citing *Bigeagle v Canada*, 2023 FCA 128 at para 94; *Democracy Watch v Canada (Attorney General)*, 2024 FCA 75 at para 7).

[60] I note the Respondent's reference to Exhibit U may be in error as they also request this exhibit be excluded on the basis of parliamentary privilege.

[61] The Applicant submits these articles are not being relied upon for the truth of their contents but rather for contextual or background purposes, and so do not engage the general rule against hearsay.

[62] I note that paragraphs 29 and 33 of the Applicant's Affidavit, and Exhibits D and E are cited in the context of public attention intensifying:

> **Public Attention Intensifies**
>
> 29. On October 4, 2023, the Globe and Mail published the allegations that Bolter AI made to CBSA. Attached to this affidavit as **Exhibit "D"** is a copy of Globe and Mail article, dated October 4, 2023.
>
> …
>
> 33. On October 26, 2023, Botler AI principals, Dutt and Morv, testified before OGGO... Their testimony received significant media attention. Attached to this affidavit as **Exhibit "E"** are copies of news articles that cover their testimony.

[63] However, I note Exhibit E seems to be cited in part for the truth of its contents in the Applicant's Memorandum at paragraph 18:

> 18. On October 26, 2023, Botler AI's principals testified before OGGO. Botler AI's testimony was widely reported in the media. During their appearance, they publicly accused the Applicant of criminal conduct, corruption, and other serious misconduct.[10]
>
> [10] MacDonald Affidavit, AMR, Tab 3, Exhibit E

[64] Similarly, Exhibit H is attached to the Applicant's Affidavit in the context of "escalating media exposure":

> 42. On November 7, 2023, I testified before OGGO for the first time. The experience of providing testimony before Parliament,

> combined with managing the fallout from the escalating media exposure, caused me significant stress and anxiety. This period culminated after several months of mounting pressure, and on November 8, 2023, I went on extended medical leave[.] Attached to this affidavit as **Exhibit "H"** is a copy of news articles covering my testimony.
>
> [Emphasis added]

[65] However, Exhibit H appears to be cited for the truth of its contents in the Applicant's Memorandum at paragraph 21:

> 21. On November 7, 2023, the Applicant testified before OGGO. During his testimony, the Applicant rebuked earlier statements made by CBSA executives, including President Erin O'Gorman and Doan, and told the Committee that OGGO had been misled or lied [to] by CBSA leadership.[13]
>
> [13] MacDonald Affidavit, AMR, Tab 3, Exhibit H.

[66] Finally, Applicant's Affidavit refers to Exhibits K, R, S, T, and V in the following paragraphs:

> **Retaliation**
>
> …
>
> 46. On November 14, 2023, Doan testified before OGGO. Doan again denied responsibility for the selection of GC Strategies. Doan's testimony was reported on in media. Attached to this affidavit as **Exhibit "K"** is a copy of news articles covering Doan's testimony.
>
> …
>
> 54. On January 18, 2024, President O'Gorman and former President Ossowski testified before OGGO. …This testimony was reported on in the media. … Attached to this affidavit as **Exhibit "R"** is a copy of news articles covering their testimony.
>
> **Further Testimony before OGGO and Media Attention**

> 55. On February 5, 2024, Lafleur testified before OGGO. about the investigation and the loss of Doan's email. Lafleur also relied on the PSF (which he offered) to support his testimony. His testimony was reported in the media. Attached to this affidavit as **Exhibit "S"** is a copy of news articles covering his testimony.
>
> 56. On February 22, 2024, I testified before OGGO a second time. ... My testimony was reported in the media. Attached to this affidavit as **Exhibit "T"** is a copy of news articles covering my testimony.
>
> …
>
> 58. On June 5, 2024, Doan testified for a second time before OGGO. He denied allegations that he lied to OGGO regarding the selection of GC Strategies, and that he destroyed his emails. He directly denied my testimony. His testimony was reported in the media. Attached to this affidavit as **Exhibit "V"** is a copy of news articles covering Doan's testimony.

[67] Each of these exhibits are cited in the Applicant's Memorandum when referencing "a series of public accusations and denials before OGGO between senior CBSA leadership and the Applicant" (at para 3, FN 2).

[68] Therefore, paragraphs Exhibits E and H and portions of the Applicant's Affidavit citing these exhibits should be struck, except and to the extent they were not struck under the previous heading V(B)(1).

C. *Is the three-part test for an interlocutory injunction under Rule 373(1) met?*

[69] The three-part test for a prohibitive interlocutory injunction is outlined in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 [*RJR-MacDonald*], namely (1) that there is a serious issue to be tried i.e., an issue that is not frivolous

or vexatious, (2) that the Applicant would suffer irreparable harm by reason of removal and (3) that the balance of convenience is in the Applicant's favour.

(1) Serious Issue

[70] In *RJR-MacDonald*, the Supreme Court of Canada instructs that the threshold to establish a serious issue is a low one: "once satisfied that the application is neither vexatious nor frivolous, the motions judge should proceed to consider the second and third tests, even if of the opinion that the plaintiff is unlikely to succeed at trial" (at 337-38).

[71] The Applicant submits there is a serious issue to be tried concerning CBSA's inability to conduct a fair and impartial investigation. Among other things, the Applicant argues "CBSA is effectively investigating itself, despite the fact that the subject matter of the investigation involves decisions, actions, and omissions of its senior CBSA leadership" and "[t]he investigators cannot be expected to impartially examine failures that occurred on their own watch." The Applicant also says "there is an ongoing investigation [by] the Public Integrity Commissioner into President O'Gorman regarding reprisal against the Applicant for his testimony before OGGO."

[72] The Respondent submits no serious issue exists because no breach of procedural fairness or bias occurred.

[73] In reference to the procedural unfairness at issue, the Applicant points to the Treasury Board *Handbook*, which advises:

> **k. Individual's Right to Respond**
>
> The individual under investigation must be given time to review the Investigation Report before it is finalized and management renders its decision. Management should therefore ensure that the employee is provided with the opportunity to provide comments on any factual errors or omissions in the investigation report and to permit the individual the opportunity to submit a written response. Management should consult the appropriate collective agreement and advise the employee of the contractual provisions contained therein related to the attendance of a bargaining agent or other representative at the meeting. (See Appendix D: Sample Letter Presenting the Draft Administrative Investigation Report and Employee's Right to Respond).

[74] The Respondent submits that the Applicant had numerous opportunities to provide submissions and comments on the Report and he took advantage of this right.

[75] The Applicant submits he was only invited to comment on factual errors or omissions with respect to his own evidence, not the Report itself. I agree with the Applicant, who has established his case is neither frivolous nor vexatious.

[76] It seems to me in constraining the Applicant as the Respondent did, a serious issue has been raised as to whether the Respondent over-reached not only the duty of procedural fairness generally as set out in *Canadian Pacific Railway Company v Canada (Attorney General)*, 2018 FCA 69 at paragraph 55-6 [*Canadian Pacific Railway*] [per Rennie JA] but also acted contrary to the Treasury Board *Handbook*.

[77] As the Federal Court of Appeal has held, procedural fairness entails ensuring the complainant knows the case against him and has a full and fair opportunity to respond, per *Canadian Pacific Railway*.

(2) Irreparable harm

[78] The parties agree "irreparable harm" refers to the nature of the harm rather than its magnitude, per *RJR MacDonald* at 341. The Respondent points out this means "harm which either cannot be quantified in monetary terms or which cannot be cured, usually because one party cannot collect damages from the other" (*RJR MacDonald* at 341; see also *Lavergne-Poitras v Canada (Attorney General)*, 2021 FC 1232 at paras 85-87; *Rostrust Investments Inc v Canada*, 2004 FC 290 at para 4, cited in *Asghar v Canada*, 2017 FC 947 at para 35).

[79] The party seeking an injunction must prove irreparable harm through clear, non-speculative evidence — mere hypotheticals or general assertions will not suffice (*Sheldon M Chumir Foundation for Ethics in Leadership v Canada (National Revenue)*, 2023 FCA 242 at para 7, citing *Ahlul-Bayt Centre, Ottawa v Canada (National Revenue)*, 2018 FCA 61 at para 15, *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at paras 14-16, *Cheder Chabad v Canada (National Revenue)*, 2013 FCA 196 at para 26, and *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31; *Thompson v Canada (Public Safety and Emergency Preparedness)*, 2009 FC 1296 at paras 82).

[80] The Applicant submits he will suffer irreparable harm from disclosure of the Report because 1) it will sustain serious and irreversible damage to his reputation; and 2) it will render

elements of his underlying Application moot. With respect, I agree on the first point such that it is not necessary to deal with the second. The Report is embargoed now and should remain so until the final determination of this dispute.

[81] As the Applicant submits, I agree serious damage to one's professional reputation constitutes irreparable harm. There are several precedents on point that I prefer to follow going back a very long time: *Douglas v Canada*, 2014 FC 1115; *Adriaanse v Malmo-Levine*, 1998 CanLII 8809 (FC), [1998] FCJ No 1912 (QL) at paragraph 21 [*Adriaanse*], citing *Bennett v British Columbia (Superintendent of Brokers)*, 1993 CanLII 2057 (BC CA) [*Bennett*].

[82] In *Adriaanse*, the applicants moved for an order staying all further proceedings of the RCMP Public Complaints Commission in the matter of complaints made against them until the Court disposed of the underlying application of judicial review, which alleged a reasonable apprehension of bias on behalf of the Chairman of the panel. The Court held at paragraph 21:

> [21] I agree entirely with Hugessen, J. that the Applicants stand to suffer serious harm if the Panel issues an adverse report. The harm which the Applicants stand to suffer would, in my view, be irreparable. Mr. MacIntosh referred me to the decision of the British Columbia Court of Appeal in *Bennett v. British Columbia (Superintendent of Brokers)*, [1993] B.C.J. No. 246. In that case the Court of Appeal had to decide whether proceedings before the British Columbia Securities Commission (the "Commission") should be stayed pending an appeal of the Panel's decision that allegations of a reasonable apprehension of bias in respect of one of the Panel members were unfounded. Lambert, J.A., in granting leave to appeal from the Panel's decision, concluded that the proceedings before the Commission should be stayed. The purpose of the proceedings before the Commission was to investigate allegations of insider trading made against three individuals. At p. 5 of his Reasons, Lambert, J.A. explains his conclusion that a stay is necessary in the circumstances:

> "17 There is a great deal of harm being done to the applicants by this very public hearing. It has been said by counsel that the applicants themselves may be called by the Commission to testify. Their credibility may well be challenged. Considerable prejudice may be visited on all of the applicants even before any decision of the Commission is made. A decision of the Commission adverse to the applicants could cause further prejudice to them and further prejudice to many other people as well.
>
> 18 The Superintendent of Brokers argues that the public interest requires that the hearing continue. I do not agree. There is no public interest, in my opinion, in inflicting grave prejudice on the three applicants by concluding a hearing which may turn out in the end to be void because a decision of this Court is made that there is reasonable apprehension of bias in relation to one or more members of the panel in the carrying out of their judicial duty. Because there is a bona fide ground of appeal and because the interests of justice require that the appeal be heard, I grant leave to appeal.
>
> 19 The next question relates to whether a stay of proceedings should be granted until a decision is given on the appeal. Again, I must balance the interests of justice, and again I reach the same decision. The grave injustice that would be done to the three applicants by having a Panel conclude its hearing, when that Panel may in the end be found to have been disqualified from the hearing because of a reasonable apprehension of bias, far outweighs in my opinion whatever public interest there may be in continuing the hearing. Accordingly, I grant a stay."
>
> [Emphasis added]

[83] The Respondent submits the Applicant has not provided clear, convincing, and non-speculative evidence of irreparable harm required by *RJR MacDonald* at 340-341. In this they submit in effect that the foregoing jurisprudence is wrong. I am not persuaded. The Respondent

also submits *Adriaanse* and *Bennett* are distinguishable on the facts, instead pointing to *Camp v Canada (Attorney General)*, 2017 FC 240 [*Camp*], per Robertson DJ (as he then was):

> [27] In brief, both *Adriaanse* and *Bennett* support the understanding that potential harm to the Applicant's judicial reputation may amount to irreparable harm. However, those were start-of-the-line cases where substantial time and money would have been wasted had the tribunal hearings proceeded to completion and the judicial review application succeeded. And most certainly, it was arguable that those cases would have fallen within the "exceptional circumstances" category and, therefore, early recourse to the courts should have been available.
>
> [28] Accepting the premise that facts make a difference, the present case is clearly distinguishable. This is an end-of-the-line case. The Inquiry Committee had completed its work and made a recommendation to the Council. In turn, the Council has received written representations and is deliberating on whether to make a recommendation for removal from office to the Minister of Justice. To the extent the Applicant has suffered damage to his reputation, it is because of the events that have already occurred as a result of the publicity surrounding the disciplinary proceedings leading up to this motion. This view is consistent with that expressed in *Canada (Immigration and Refugee Board) v Canada (Attorney General)*, 2010 FC 1064.
>
> [29] The Applicant's argument with respect to future reputational damage is premised on unknowns. If he is removed from office and then reinstated, following a successful judicial review and Council rehearing, the original removal creates a risk the public will question his authority and ability to hear future cases. So the Applicant's argument goes. The Respondent offers persuasive rejoinders.
>
> [Emphasis added]

[84] But, and with respect, I note the procedural fairness issues in *Camp* concerned the opportunity to provide oral submissions. It did not involve the far more serious issue of bias in an investigation. I therefore respectfully disagree that *Camp* is more applicable to the case at bar than *Adriaanse* and *Bennett*; *Camp* is distinguishable.

[85] The Respondent also points out the Applicant and another employee have commenced an action seeking damages against a third party in the Superior Court of Justice. In the Respondent's cross-examination of the Applicant on June 9, 2025, the Applicant confirmed this matter is still live before the Ontario Superior Court (Transcript at 47, line 17). The Respondent seems to suggest this demonstrates the alleged harms can be quantified monetarily and/or cured by damages compensable in damages, meaning the harm is not "irreparable" (*RJR-MacDonald* at 341).

[86] In reply, the Applicant submits the Superior Court claim is against Botler AI for defamation. The Applicant submits claims of damages for defamation is not mutually exclusive from irreparable harm to his reputation from the dissemination of the Report. Rather, the Applicant maintains if the Report itself is defamatory, the Applicant may also seek damages for that. Again I agree.

[87] The Respondent also points to *Shoan v Canada (Attorney General)*, 2016 FC 1031 at paragraph 42, per Mactavish J (as she then was), which considered impacts on the applicant's reputation after being publicly terminated. In my respectful opinion, this case is distinguishable as the motion was for mandatory relief (to be reinstated to his position) rather than a prohibitive interlocutory injunction (to prevent disclosure of information) as in the case at bar, and because here the Applicant has not been terminated: that is the point of this case.

[88] In my respectful view, the Applicant has established he would face irreparable harm to his professional reputation if the Report is distributed or disseminated prior to the disposition of

his Application given the seriousness of his allegations of bias and procedural unfairness in the investigation process and in line with jurisprudence and precedent noted above.

(3) Balance of convenience

[89] The Applicant submits the balance of convenience overwhelmingly favours him in this case. He submits there is no identifiable harm or prejudice to the Respondent if dissemination of the Report is temporarily restrained, but he will suffer irreparable harm to his reputation if it is. The Applicant further points out he "has been under investigation for 30 months or 17 months (depending on who one asks)," and submits "[t]he Respondent will suffer no prejudice waiting another few months before sharing its Report. On this point, it should be considered that the Applicant has requested an expedited hearing" (Applicant's Memorandum at para 77).

[90] The Respondent submits the balance of convenience does not favour granting the Applicant's motion because there is a public interest in effective regulation of public servants, which must be considered (*RJR-MacDonald* at 343-47). Further, an injunction would interfere with the CBSA's disclosure obligations. On this last point the Respondent cites as an example s 19.9(1) of the *Public Servants Disclosure Protection Act*, SC 2005, c 46, which states (although I am not certain of its applicability):

Access	**Accès à donner à l'enquêteur**
19.9 (1) If the investigator so requests, chief executives and public servants must provide the investigator with any facilities, assistance, information and access to their respective offices that the investigator may require for	**19.9 (1)** Si l'enquêteur en fait la demande, les administrateurs généraux et les fonctionnaires doivent lui donner accès à leur bureau et lui fournir les services, l'aide et les renseignements qu'il peut exiger dans le cadre de

the purposes of the investigation.	l'enquête.

[91] The Respondent further submits:

> 72. In this case, the public, public servants and other employees of the CBSA need to have confidence in the ability of the CBSA to discharge its responsibility for internal investigation of allegations of workplace misconduct. Given the seriousness of the allegations the Applicant faces, the interests of the public in effective regulation of public servants warrants the continuance of the investigation. Further, in the context of this employment matter, if this Court were to exercise any residual discretion it may have to decide the Applicant's motion for an interlocutory injunction, this would undermine the labour grievance process enacted by Parliament. As stated above, premature judicial intervention would not be complementary to fundamental principles of labour relations, but destructive of them.
>
> 73. As Justice Zinn highlighted, the Treasury Board governs all aspects of the "core public administration" under the *Financial Administration Act*, RSC 1985, c. F-11, s. 11(1), sharing CBSA's findings with affected stakeholders was not improper. While Justice Zinn highlighted that the PSF was a preliminary finding, the same rationale outlined in Article 4.1.7 of the Policy on Government Security's Directive on Security Management for disseminating the PSF applies equally to the PSIR.

[92] I note Justice Zinn made this finding on the basis of prematurity in the context of the PSF, the second basic document in this case, which was released at the draft fact-finding stage and of course well prior to the conclusion and likely even the start of the impugned investigation and draft final Report which supposedly came after more investigation. As such I respectfully agree with the Applicant the balance of convenience falls in his favour.

[93] I therefore find the Applicant has met the three-part test for an interlocutory injunction under Rule 373(1), which will issue.

D. *Should the Applicant be relieved from compliance with Rule 373(2)?*

[94] As mentioned above, Rule 373(2) of the *Federal Courts Rules* requires that "[u]nless a judge orders otherwise, a party bringing a motion for an interlocutory injunction shall undertake to abide by any order concerning damages caused by the granting or extension of the injunction."

[95] The Applicant submits it is just in the circumstances that he should be relieved from compliance with Rule 373(2) because:

> a. The Applicant is not a commercial enterprise. He is a former employee of the Respondent. His claim arises from an employment relationship on the basis of unfair and harmful treatment.
>
> b. The power imbalance is overwhelming. The Applicant is an individual on medical leave. The Respondent is a government body, one of the most powerful institutions in the country.
>
> c. Requiring an undertaking would chill similar claims. Imposing such a condition could deter other employees from pursuing legitimate claims against powerful employers.
>
> d. The injunction would cause no known damages. An undertaking would be unnecessary at best and invite mischief at worst.
>
> (Applicant's Memorandum at para 81)

[96] The Applicant points to *Ahousaht First Nation v Canada (Fisheries and Oceans)*, 2014 FC 197 at paragraph 41, per Mandamin J [*Ahousaht*], citing *Taseko Mines Ltd. v Phillips*, 2011 BCSC 1675, for the considerations warranting judicial discretion to grant relief from Rule 373(2):

> [41] In *Taseko Mines Ltd. v Phillips*, 2011 BCSC 1675, Justice Grauer illustrates at para 70 the types of considerations warranting such discretion:

> I conclude that the circumstances of this case justify an order relieving the petitioners of the obligation to give an undertaking as to damages. Those circumstances are: my assessment of the balance of convenience as outlined above; the importance of ensuring that matters proceed on an appropriate basis between these parties for the foreseeable future; and the relative economic strength of the parties and the relative harm each is likely to suffer. I also take into account the petitioners' letter to Taseko of October 13, 2011, in which they notified Taseko of their position, and advised Taseko not commence any activities under the permits while the Tsilhqot'in National Government considered its options for response.
>
> [Emphasis added]

[97] I note the Court in *Ahousaht* also cites (at para 39) *Canada (Public Works and Government Services) v Musqueam First Nation*, 2008 FCA 214 at paragraph 62 [*Musqueam*], which instructs some evidence is required to demonstrate compelling circumstances warranting a limited undertaking or no undertaking:

> [62] … It seems to me that the default position under this provision is that a limited undertaking should not be accepted unless the Court is presented with some evidence with respect to compelling circumstances that warrant a limited undertaking or no undertaking. In this case, *Musqueam* filed no evidence, let alone any evidence with respect to its ability to pay. Therefore the Motions Judge had no evidence on which to order that the undertaking be limited.
>
> [Emphasis in original]

[98] The Respondent submits there is no evidence on the record to support the Applicant's request for relief from compliance with Rule 373(2). In my view on this point it is notable the Applicant's Affidavit attests that his suspension without pay "was financially devastating. I was

left without income or health benefits while on medical leave. I was forced to borrow heavily to support my family and to fund my response to CBSA's actions" (at para 86).

[99] It seems to me and I find this is the "some evidence" required.

[100] I also note that in *Mowi Canada West Inc v Canada (Fisheries, Oceans and Coast Guard)*, 2021 FC 293, this Court held:

> [153] … [I]n public law cases, applicants seeking injunctions have often been relieved of the obligation to provide an undertaking for damages, in particular where there was doubt, as there is here, that the respondent would suffer financial damages in the event the injunction was granted and the underlying application for judicial review dismissed (*University of Alberta . Alberta (Human Rights Commission)*, 1988 CanLII 3511 (AB QB) at para 112).
>
> [154] In both *Musqueam* and *Commodore*, the Federal Court of Appeal also held that the failure to provide an undertaking for damages is but a factor that weighs against the granting of injunctions at the balance of convenience stage of the test. However, in this case neither the Minister nor the Conservation Coalition has alleged that any quantifiable harm would occur should the motions be granted, and no evidence has been led to demonstrate how any damages may be incurred. This does not alter my finding that the balance of convenience weighs in favour of granting the motions.
>
> [155] In the end, I find compelling circumstances in favour of exercising my discretion so as not to require either Mowi or Saltstream to provide an undertaking for damages.
>
> [Emphasis added]

[101] In my view the jurisprudence and precedents in favour dispensing with the requirement the Applicant provided and to give an undertaking for damages are compelling, and I resolve them in the Applicant's favour.

E. *Abuse of process and/or estoppel preventing Applicant from bringing injunction motion*

[102] The Respondent makes two alternative arguments, both stemming again from Justice Zinn's decision in *Utano*. First, the Respondent submits the motion constitutes an abuse of process because "the Applicant previously sought and was denied similar relief from this Court" (Respondent's Memorandum at para 3). Second, the Respondent submits the Applicant is estopped from bringing this motion because (a) the same question was decided in *Utano*; (b) the decision in that case was final; and (c) the parties in the first motion are the same as those in the present proceedings (Respondent's Memorandum at para 80, citing *Danyluk v Ainsworth Technologies*, 2001 SCC 44 at para 25).

[103] At the hearing, the Respondent confirmed they maintain these arguments in spite of the Amended Application now dealing with the grievance and the draft final Report, neither of which were before Justice Zinn, which significant and material differences, in my respectful submission, dispose of both. This is a very different proceeding from that before Justice Zinn — it entails the final Report not just preliminary statement of facts, and it involves judicial review of the grievance denial, neither of which were before my colleague.

VI. Conclusion

[104] In the result the injunction requested will be granted as will the Applicant's request to be relieved from undertaking as to damages.

VII. Costs

[105] Both parties seek costs of the motion in an unspecified amount per their written submissions. No specifics were provided at the hearing notwithstanding longstanding practice directions dating back to Chief Justice Lufty and updated since, clearly requiring parties to do just that. It seems to me that the parties abandoned their costs submissions.

ORDER in T-691-25

THIS COURT'S ORDER is that:

1. The motion for an interlocutory injunction is granted and the Respondent is prohibited from distributing or disseminating the Report or any derivative thereof until the disposition of this Application without express order of this Court.

2. The parties are to review these Reasons with respect to the issues of parliamentary privilege and in particular paragraphs 57, 58 and 68, which are incorporated by reference into this Order, and after consulting with each other, they are to present the Court with an agreement on what should be struck, or advise on what they disagree on and why, within a reasonable period of time for the Court's resolution.

3. The Applicant is relieved from compliance with Rule 373(2) of the *Federal Courts Rules*.

4. There is no Order as to costs.

"Henry S. Brown"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

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PLACE OF HEARING:	OTTAWA, ONTARIO
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APPEARANCES:

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