Federal Court Cour fédérale

Date: 20260421

Docket: T-399-26

Citation: 2026 FC 533

Vancouver, British Columbia, April 21, 2026

PRESENT: Mr. Justice Gascon

BETWEEN:

JING JING HE

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] On March 31, 2026, the Applicant, Jing Jing He, filed a motion in writing pursuant to section 369 of the *Federal Courts Rules*, SOR/98-106, seeking the following interlocutory remedies from the Court:

A. An order prohibiting the Canada Border Services Agency [CBSA] from continuing to block Ms. He's monitoring access to her seized 2022 Rivian R1T electric vehicle

[Rivian Vehicle] by maintaining the vehicle into "service mode," and requiring the CBSA to cease blocking such access within 48 hours of the date of the order;

B. An order prohibiting the CBSA from reactivating the "service mode" on the Rivian Vehicle or otherwise blocking Ms. He's monitoring access through the Rivian mobile application [Rivian App] for the duration of these proceedings, unless the Respondent, the Attorney General of Canada [AGC] — who represents the CBSA in this matter — obtains a further order of this Court;

C. An order that, in the event the CBSA identifies a specific articulable security concern arising from any feature of the Rivian App, the CBSA apply opaque tape or physical covers over the vehicle's exterior camera lenses as an alternative to blocking Ms. He's monitoring access; and

D. Such further and other relief as this Court may deem just.

[2] After reviewing and considering the materials filed with the Court by each party, including the affidavits and the written submissions, and for the reasons that follow, I am dismissing Ms. He's injunction motion.

II. The factual context

[3] On March 3, 2025, Ms. He's Rivian Vehicle was seized by the CBSA at the Pacific Highway port of entry [Pacific POE] because she failed to declare its full value upon importation into Canada, contrary to section 7.1 of the *Customs Act*, RSC 1985, c 1 (2nd Supp) [Customs Act]. At all times since March 3, 2025, the Rivian Vehicle remained in the CBSA's possession and custody.

[4] Ms. He appealed the CBSA's enforcement action to the CBSA Recourse Directorate. On January 16, 2026, a delegate for the Minister of Public Safety and Emergency Preparedness

[Minister's Delegate] decided that: (i) under the provisions of section 131 of the Customs Act, there was a contravention of section 7.1 of the Customs Act as Ms. He provided information that was not true, accurate, and complete in respect of the value of the seized Rivian Vehicle [Contravention Decision]; (ii) under the provisions of section 133 of the Customs Act, the seized Rivian Vehicle may be released upon receipt of the terms of release, namely, a payment in the amount of $9,558.55 [Forfeiture Decision]; and (iii) under subsection 11.1(2) of the Customs Act, the cancellation of the Ms. He's membership in the NEXUS program is upheld, but only for a period of five years, and Ms. He could reapply for membership in the NEXUS program on March 3, 2030 [NEXUS Decision].

[5] Ms. He initiated an action challenging the Contravention Decision in Court File No. T-598-26 and requested judicial review of the Forfeiture and NEXUS Decisions in this Court File No. T-399-26.

[6] Following the seizure, the Rivian Vehicle was left uncharged for approximately eleven months while in the CBSA's custody at the Pacific POE, from March 2025 to early February 2026. When Ms. He discovered, through the Rivian App, that the Rivian Vehicle's battery had dropped to 0% — a critically dangerous level for electric vehicle batteries —, she brought the matter to the CBSA's and to this Court's attention, and the CBSA took steps to charge the vehicle.

[7] The Rivian App provides a vehicle owner with monitoring information including battery charge level, tire pressure, odometer reading, and vehicle location. According to Ms. He, it does not provide any camera access or camera functionality.

[8] On February 2, 2026, in the context of the present judicial review application, Ms. He filed a motion for a mandatory injunction requesting, *inter alia*, that the CBSA charge the Rivian Vehicle. In that motion, Ms. He sought mandatory injunctive relief, namely, an order requiring the CBSA to charge the Rivian Vehicle periodically and to maintain records of all charging sessions or, alternatively, an order requiring the CBSA to provide Ms. He or an authorized third party with supervised access to the vehicle to charge and maintain the vehicle's battery while it remains in the CBSA's custody. That motion was dismissed by Justice Turley on February 11, 2026 in *He v Canada (Attorney General)*, 2026 CanLII 9775 (FC) [*He Turley*].

[9] On February 3, 2026, the CBSA Document and Exhibit Control [DEC] Team was first notified that Ms. He was requesting that steps be taken to charge the Rivian Vehicle as soon as possible. The CBSA was initially unable to charge the Rivian Vehicle because the Pacific POE did not have an appropriate electrical outlet. On February 12, 2026, the vehicle was thus towed to the Douglas Port of Entry [Douglas POE] to facilitate the charging and to allow for additional oversight of the charging process. On February 13, 2026, the CBSA activated the "service mode" on the Rivian Vehicle, which blocks Ms. He's ability to monitor the vehicle through the Rivian App.

[10] In the initial days at the Douglas POE, the CBSA was unable to charge the Rivian Vehicle using the power cord provided by Ms. He. After consultation with Ms. He and authorized Rivian employees to remedy the technical issues, the 12-volt battery in the Rivian Vehicle was replaced (at Ms. He's expense) and the CBSA was able to charge the vehicle starting on February 23, 2026. When the Rivian mobile service mechanic replaced the 12-volt

battery, he also updated the Rivian Vehicle settings to maintain a battery power level of 70% in order to ensure optimal battery health. Charging effectively began after this battery replacement.

[11] I pause to observe that, based on the evidence on the record, electric vehicle batteries must be maintained and charged regularly to preserve their function and overall vehicle integrity.

[12] According to the AGC's evidence filed in response to Ms. He's injunction motion — namely, the affidavits of Brittany Baird and of Mae Loraine Lo respectively affirmed on April 8 and 9, 2026 —, the CBSA's DEC Team has been monitoring the charge of the Rivian Vehicle since February 23, 2026 to ensure that it is kept at 70%. Between February 24, 2026 and April 1, 2026, there have been 31 checks of the battery confirming that the Rivian Vehicle has maintained battery power between 69% and 71% for all checks. Furthermore, moisture absorbers have been placed into the cabin of the Rivian Vehicle and will be changed as needed to reduce the risk of condensation build up that could result in mold.

[13] Ms. He was informed that the CBSA was not prepared to allow the Rivian Vehicle to be taken out of "service mode" because of security and privacy concerns. Those concerns include : (i) the cameras located on the Rivian Vehicle (which would be activated when switched out of "service mode") could be utilized as a surveillance tool and there is a high risk of detailed sensitive information being obtained regarding port of entry operations, staffing levels and schedules, operational pressure points, inspection techniques, and enforcement activities at the Douglas POE, one of the busiest land border crossings in Canada; (ii) as CBSA officers frequently conduct interviews in the secondary examination area and/or discuss examinations as they are performing vehicle inspections, the cameras create privacy concerns for travelers

crossing at the Douglas POE given the volume of traffic and an increased risk for travelers who are examined in the inspection stalls near the Rivian Vehicle, as a result of the sensitivity of secondary examinations; (iii) at the Douglas POE, the Rivian Vehicle is parked near the vehicle bay where the highest risk vehicles are taken for in-depth searches; and (iv) a privacy breach risk exists regarding travelers who are subject to enforcement actions.

[14] I note that the security and privacy concerns identified by the CBSA relate to the Douglas POE, where the Rivian Vehicle was moved to in mid-February 2026. This evidence is not contradicted.

[15] The CBSA also raised concerns about Ms. He's ability to alter the Rivian Vehicle through the Rivian App that might unknowingly impact the CBSA's ability to maintain the vehicle, such as (i) a vehicle owner can use the Rivian App to change the charging range of the vehicle to be between 50% and 100%, and would be able to make care decisions for the vehicle independently and without the knowledge of the CBSA DEC Team, who is legally responsible for the care and control of the seized Rivian Vehicle; and (ii) the Rivian App allows for GPS locating as well as the ability to physically gain access, drive the vehicle, or turn on the system, which would further deplete and possibly damage the battery. The CBSA claims that these functions could potentially change the Rivian Vehicle in ways that conflict with the current care plan and remove the certainty that the CBSA has when in full control of seized assets.

[16] Ms. He has offered to have opaque tape placed over the Rivian Vehicle's exterior camera lenses to address the CBSA's camera-related concerns, but the CBSA did not accept this proposal.

[17] Ms. He was informed of the CBSA's plan to ensure that the Rivian Vehicle would be charged and monitored. The CBSA also indicated to Ms. He that it was open to her to take possession of her vehicle if she so desired by paying the assessed terms of release in the amount of $9,558.55. Ms. He submits that paying the terms of release and taking possession of the Rivian Vehicle would "compromise the evidentiary record" as, she says, the vehicle needs to remain in its "collision-damaged condition," which is central to her case.

[18] I further note that, throughout the process, counsel for the AGC has been liaising with Ms. He on a regular basis about the charging issues and Ms. He's desire to take the Rivian Vehicle out of "service mode."

III. Legal framework

[19] An interlocutory injunction is an extraordinary equitable relief requiring special and compelling circumstances (*Universal Ostrich Farms Inc v Canada (Food Inspection Agency)*, 2025 FCA 164 at para 82 [*Ostrich Farms*]). It is trite law that, in order to succeed on a motion seeking an interlocutory injunction, applicants must satisfy the well-known tripartite test articulated by the Supreme Court of Canada [SCC] in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 [*RJR-MacDonald*].

[20] The *RJR-MacDonald* test requires applicants to demonstrate that: (i) there is a serious issue to be tried in their underlying application, following a preliminary assessment of the merits of such application; (ii) irreparable harm will result if the injunction is not granted; and (iii) the balance of convenience, which contemplates an assessment of which of the parties would suffer

greater harm from the granting or refusal of the remedy pending a decision on the merits, favours the granting of the interlocutory relief (*R v Canadian Broadcasting Corp*, 2018 SCC 5 at para 12 [*CBC*]; see also *Ahousaht First Nation v Canada (Fisheries and Oceans)*, 2019 FC 1116 at paras 48–53 and *Robinson v Attorney General of Canada*, 2019 FC 876 at paras 56–82).

[21] As stated by the SCC in *Google Inc v Equustek Solutions Inc*, 2017 SCC 34 [*Google*], the fundamental question is whether the granting of the injunctive relief is "just and equitable in all of the circumstances of the case," and this will "necessarily be context-specific" (*Google* at para 25). I pause to observe that the SCC decision in *Google* has not changed the well accepted three-prong test developed in *RJR-MacDonald* and expanded in *CBC* for mandatory injunctions, nor has it superimposed an additional consideration over it. However, the *Google* decision reinforces the principle that, in exercising their discretion to grant a stay or an interlocutory injunction, courts need to be mindful of overall considerations of justice and equity.

[22] The *RJR-MacDonald* test is conjunctive, meaning that all three elements of the test must be satisfied for the Court to grant relief (*Ostrich Farms* at para 69; *Air Passengers Rights v Canada (Transportation Agency)*, 2020 FCA 92 at para 15, leave to appeal to the SCC dismissed, no 39266 (December 23, 2020); *Janssen Inc v Abbvie Corporation*, 2014 FCA 112 at para 19 [*Janssen*]). None of the branches can be seen as an "optional extra" (*Janssen* at para 19), and the "failure of any of the three elements of the test is fatal" (*Canada (Heritage) v 9616934 Canada Inc*, 2023 FCA 141 at para 11, citing *Canada (Health) v Glaxosmithkline Biologicals SA*, 2020 FCA 135 at para 9 [*Glaxosmithkline*] and *Canada (Citizenship and Immigration) v*

Ishaq, 2015 FCA 212 at para 15; see also *Western Oilfield Equipment Rentals Ltd v M-I LLC*, 2020 FCA 3 at para 7 [*Western Oilfield*])).

[23] That said, the three prongs of the test are not watertight compartments. They are somewhat interrelated and they should not be assessed mechanically in total isolation from one another (*Ostrich Farms* at para 14; *The Regents of University of California v I-Med Pharma Inc*, 2016 FC 606 at para 27, aff'd 2017 FCA 8; *Merck & Co Inc v Nu-Pharm Inc* (2000), 2000 CanLII 14758, 4 CPR (4th) 464 (FC) at para 13). They are instead flexible and interconnected: "[e]ach one relates to the others and each focuses the court on factors that inform the overall exercise of the court's discretion in a particular case" (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 135). However, this does not mean that one of the three compartments can be completely empty and compensated by the other two being filled to a higher level. There still needs to be something on each of the three branches, and none of the elements of the test can be entirely left aside and rescued by the other two (*Ledshumanan v Canada (Public Safety and Emergency Preparedness)*, 2021 FC 1463 at paras 14–15 [*Ledshumanan*]; *Okojie v Canada (Citizenship and Immigration)*, 2019 FC 880 at para 32 [*Okojie*]). As the Federal Court of Appeal [FCA] recently said, "while the strength in one factor may balance out weakness in another, a stay will not be issued where a prong of the test is not met" (*Ostrich Farms* at para 14).

[24] In sum, no matter how sympathetic a situation may be, there is no royal road to obtaining an interlocutory injunction, and applicants must meet their burden and satisfy the requirements

set out by the SCC in *RJR-MacDonald*, *Google*, and *CBC* and applied by the FCA and this Court in numerous decisions.

IV. Analysis

[25] In the present case, I find that Ms. He has not met the *RJR-MacDonald* tripartite test, and more specifically its "serious issue" and "irreparable harm" requirements. I am therefore not satisfied that, in her particular circumstances, the facts justify the exercise of my discretion in favour of the prohibitory and mandatory orders she is seeking.

A. *Serious issue*

[26] The first component of the tripartite test is whether the materials in the underlying application and the evidence on the record are sufficient to satisfy the Court, on a balance of probabilities, that Ms. He has raised a serious issue to be tried. The "serious issue" element of the *RJR-MacDonald* test requires the Court to conduct a preliminary assessment of the strength of the merits of Ms. He's application underlying her motion, namely, her challenge of the Forfeiture and Nexus Decisions in this file.

[27] The demonstration of a single serious issue suffices to meet this part of the test (*Jamieson Laboratories Ltd v Reckitt Benckiser LLC*, 2015 FCA 104 at para 26).

(1) The applicable threshold

[28] The requirement of a serious issue to be tried can give rise to one of three different thresholds (*Ledshumanan* at para 19; *Letnes v Canada (Attorney General)*, 2020 FC 636 at para 40; *Okojie* at paras 69–87). First, the usual and general threshold is a low one, in which case the Court should not engage in an extensive review of the merits of the underlying application. There are no specific requirements to be met to satisfy this low threshold, and the Court must simply conclude that the issues raised in the underlying application are "neither vexatious nor frivolous" (*RJR-MacDonald* at pp 338–339). Second, an elevated threshold applies "when the result of the interlocutory motion will in effect amount to a final determination of the action" (*RJR-MacDonald* at p 338). These situations call for a more extensive review of the merits of the underlying application at the first stage of the *RJR-MacDonald* analysis. They have often been referred to as situations requiring a "likelihood of success" in the underlying application. Third, for mandatory interlocutory injunctions, the SCC has established in *CBC* that an even higher, heightened threshold of a "strong prima facie case" applies. The SCC expressly stated that, in such cases, a "strong likelihood" of success needs to be demonstrated when assessing the strength of the applicant's case at the first stage of the *RJR-MacDonald* test (*CBC* at paras 15, 17).

[29] In *CBC*, the SCC examined in more detail the framework applicable for granting a mandatory interlocutory injunction — an injunction that directs the defendant to do something, as opposed to an injunction that prohibits the defendant from doing something —. The SCC held that, in such a case, the appropriate criterion for assessing the first factor of the *RJR-MacDonald* test is a heightened and more stringent threshold, as opposed to simply one that is

neither frivolous nor vexatious. This is so because a mandatory injunction directs a defendant to undertake a positive course of action, such as "taking steps to restore the *status quo*" or to otherwise "put a situation back to what it should be" [emphasis added] (*CBC* at para 15). A strong *prima facie* case that an applicant will succeed at trial "entails showing *a strong likelihood* on the law and the evidence presented that, at trial, the applicant will ultimately be successful in proving the allegations set out in the originating notice" [emphasis in original] (*CBC* at para 18).

[30] The AGC pleads that *CBC* and this heightened threshold of a "strong *prima facie* case" can be directly imported and applied to Ms. He's injunction motion. Since Ms. He is seeking to stop the CBSA from using the "service mode," to put the situation back to what it was at the Pacific POE, and to grant her access to the vehicle through the Rivian App, the AGC claims that the highest standard developed in *CBC* for mandatory interlocutory injunctions should apply. Ms. He disagrees and says that the usual low threshold of "neither frivolous nor vexatious" governs her motion as she is seeking to prohibit the CBSA from continuing to use the "service mode."

[31] I accept that the frontier between mandatory and prohibitory injunctions is sometimes hard to draw. Indeed, in *CBC*, the SCC acknowledged that distinguishing a prohibitory from a mandatory injunction may be difficult, given that even prohibitive language may require a party to take positive action. However, the SCC enunciated as follows the question to be determined by the courts in case of doubt: "the application judge should examine whether, in substance, the overall effect of the injunction would be to require the defendant to *do* something, or to *refrain from doing* something" [emphasis in original] (*CBC* at para 16). In the present case, I am

satisfied that, contrary to the situation that prevailed in *He Turley*, the first two conclusions sought by Ms. He in her injunction motion would have the overall effect of refraining the CBSA from continuing to use the "service mode" and from blocking Ms. He's monitoring access through the Rivian App (as opposed to forcing the CBSA to do something). In those circumstances, and contrary to the AGC's submissions, these conclusions do not bear the main substance or even the attributes of a mandatory injunctive relief. They are prohibitory reliefs.

[32] Turning to the last conclusion in Ms. He's motion, which seeks an alternative order that the CBSA apply opaque or physical covers over the vehicle's exterior camera lenses, the situation is different as this is clearly a mandatory injunctive relief.

(2) No serious issue raised by Ms. He

[33] For the two main conclusions of Ms. He's motion, the low threshold of "neither frivolous nor vexatious" therefore applies on the first prong of the *RJR-MacDonald* test. In applying this "neither vexatious nor frivolous" test, the Court must however bear in mind that, in order to succeed on her application for judicial review, Ms. He must convince the Court that the Forfeiture and NEXUS Decisions are unreasonable (*Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*]). Where the applicable standard of review is reasonableness, the role of a reviewing court is to examine the reasons given by the administrative decision maker and to determine whether the decision is based on "an internally coherent and rational chain of analysis" and is "justified in relation to the facts and law that constrain the decision maker" (*Vavilov* at para 85).

[34] In her submissions, Ms. He raises two main concerns. She first claims that she has two proceedings before this Court (i.e., Court File Nos. T-399-26 and T-598-26) challenging the seizure and valuation of the Rivian Vehicle, and that these constitute "clearly a serious issue to be tried." Second, she adds that there is also a serious question as to whether the CBSA's duty of care over seized property, as acknowledged by CBSA's own internal documents, is compatible with blocking her only independent means of monitoring the Rivian Vehicle's condition, particularly where the CBSA has failed to maintain her vehicle charged over an eleven-month period (when the vehicle was at the Pacific POE).

[35] With respect, neither of these grounds are sufficient to meet the requirements of a "serious issue."

[36] Ms. He's second ground can be rapidly disposed of and dismissed, as the CBSA's "duty of care" or the CBSA's custody of the Rivian Vehicle is totally irrelevant to her underlying proceeding challenging the Forfeiture and NEXUS Decisions. The "serious issue" requirement relates to the underlying CBSA decisions she challenges, not to the subsequent behaviour of the CBSA.

[37] Turning to MS. He's first ground, her submissions on this point are limited to two paragraphs in her written representations that simply repeat how she framed the issues. There is nothing on that front in her affidavit. As was the case in *He Turley*, Ms. He provided no evidence nor submissions about the alleged errors in the CBSA's Forfeiture and NEXUS Decisions. While Ms. He is self-represented, the burden remains on her to establish the requirements of the

extraordinary injunctive relief she is seeking, as Justice Turley indeed pointed out to her in *He Turley* at paragraph 9.

[38] In her Notice of Application, Ms. He says that the Forfeiture and NEXUS Decisions were procedurally unfair because the CBSA "failed to meaningfully engage with central submissions and key evidence she provided." With respect, this is not a procedural fairness issue, but it rather goes to the merits and the reasonableness of the two impugned decisions.

[39] Furthermore, nothing in the Forfeiture and NEXUS Decisions support any procedural fairness concerns. As mentioned by Justice Turley in her decision, the reasons clearly explained that Ms. He was informed of the "case to meet" with the Notice of Reasons for Action on April 25, 2025, and additional information was provided to her on June 23, 2025. Ms. He was provided an opportunity to respond, and she submitted representations to the CBSA on several occasions, notably on April 25, 2025, May 1, 2025, June 24, 2025, June 25, 2025, June 26, 2025, and June 27, 2025.

[40] In short, and while this will be further examined by the merits judge, I do not detect any appearance of procedural unfairness in the process followed by the CBSA and Ms. He has not singled out anything specific in that respect in her motion materials.

[41] Regarding the unreasonableness of the Forfeiture and NEXUS Decisions, Ms. He claims that the forfeiture and NEXUS determinations rest on "central factual misapprehensions and

unsupported premises concerning valuation and transaction/ownership context" and fail to demonstrate a meaningful consideration of her submissions.

[42] With respect to her allegations of a failure to meaningfully engage with her evidence and submissions, Ms. He has not identified any particular element that the CBSA would have omitted. Contrary to Ms. He's submissions, I find that the Forfeiture and NEXUS Decisions leave no doubt that the CBSA reviewed and considered all the arguments and evidence put forward by Ms. He, including Ms. He's own valuation of the Rivian Vehicle and repair estimates as well as the current assessed value of $52,000 USD from the Rivian dealership, provided by Ms. He. In light of the evidence, the CBSA concluded to a transactional value of $53,000 USD for the Rivian Vehicle further to a complete analysis.

[43] Despite Ms. He's claims to the contrary, I am satisfied that the CBSA has not ignored any evidence but rather weighed the evidence differently than what Ms. He would have preferred. Moreover, I underline that decision makers are not required to address every piece of evidence or argument before them, and their reasons are not to be assessed against a standard of perfection.

[44] Based on the record before me, Ms. He's submissions against the Forfeiture and NEXUS Decisions effectively boil down to asking the Court to reweigh the evidence before the CBSA and to revisit the consideration of the evidence made by the decision maker. This is not the Court's role on judicial review (*Vavilov* at para 125). More specifically, absent exceptional circumstances — none of which are present here —, a reviewing court will not interfere with an administrative decision maker's factual findings. In other words, the CBSA's Forfeiture and

NEXUS Decisions are based on an internally coherent and rational chain of analysis and Ms. He has not identified any serious flaws or shortcomings in her motion materials.

(3) Conclusion on serious issue

[45] In my view, with respect to both the Forfeiture Decision and the NEXUS Decision, Ms. He raises issues with the CBSA's analysis that are frivolous and thus insufficient to meet the low threshold of the first prong of the *RJR-MacDonald* test. As far as her last mandatory conclusion is concerned, in the absence of any detailed submissions or evidence about the alleged errors in the CBSA decisions, Ms. He falls well short of demonstrating that she has a "strong likelihood" that she will succeed in her application for judicial review.

[46] The first element of the *RJR-MacDonald* test is accordingly not met.

B. *Irreparable harm*

[47] I am also of the view that Ms. He's has failed to establish, with clear, convincing, and non-speculative evidence and on a balance of probabilities, that she will suffer irreparable harm in the interim period until a decision is made on her application for judicial review.

(1) The applicable threshold

[48] On the second element of the *RJR-MacDonald* test, applicants must demonstrate, through clear, convincing, and non-speculative evidence, that there is a real probability that they will suffer irreparable harm between now and the time their application is finally disposed of, such

that the extraordinary injunctive relief they seek is warranted (*Glaxosmithkline* at paras 15–16). As in any injunction or stay application, the burden lies on the moving party to provide such evidence (*Ostrich Farms* at para 11; *Canada (Attorney General) v Bertrand*, 2021 FCA 103 at para 10).

[49] Irreparable harm refers to the nature of the harm suffered rather than its magnitude. It is harm which "either cannot be quantified in monetary terms or which cannot be cured" (*RJR-MacDonald* at p 341).

[50] Irreparable harm is a strict test. The FCA has frequently insisted on the attributes and quality of the evidence needed to establish irreparable harm in the context of stays or injunctive reliefs (*Canada (Attorney General) v Robinson*, 2021 FCA 39 at para 24; *Glaxosmithkline* at paras 15–16; *Western Oilfield* at para 11; *Janssen* at para 24).

[51] Irreparable harm must flow from clear and non-speculative evidence (*Astrazeneca Canada Inc v Apotex Inc*, 2011 FC 505 at para 56, aff'd 2011 FCA 211; *Aventis Pharma SA v Novopharm Ltd*, 2005 FC 815 at paras 59–61, aff'd 2005 FCA 390). Merely claiming that irreparable harm is possible is not enough: it is not sufficient to demonstrate that irreparable harm is "likely" to be suffered, and the moving party must rather show that it will suffer irreparable harm if the injunction or the stay is denied (*Ostrich Farms* at para 46; *Landry v Abenakis of Wolinak First Nation*, 2021 FCA 197 at para 99; *Arctic Cat, Inc v Bombardier Recreational Products Inc*, 2020 FCA 116 at para 19; *United States Steel Corporation v Canada*

(Attorney General), 2010 FCA 200 at para 7; *Centre Ice Ltd v National Hockey League*, 1994 CanLII 19510 (FCA), 53 CPR (3d) 34 at p 52).

[52] A real probability does not mean a certainty, but the evidence must be more than a series of possibilities, speculations, or hypothetical or general and unsupported assertions, all of which have no probative value (*Bell Canada v Beanfield Technologies Inc*, 2024 FCA 28 at para 24; *Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 at paras 15–16 [*Gateway City Church*]; *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31 [*Glooscap*]). In reality, "the moving party must demonstrate in a detailed and concrete way that it will suffer real, definite, unavoidable harm – not hypothetical and speculative harm – that cannot be repaired later" (*Janssen* at para 24; see also *Ostrich Farms* at para 46 citing *Canada (Attorney General) v Oshkosh Defense Canada Inc*, 2018 FCA 102 at para 25 [*Oshkosh*]).

[53] It is equally insufficient "for those seeking a stay […] to enumerate problems, call them serious, and then, when describing the harm that might result, to use broad, expressive terms that essentially just assert – not demonstrate to the Court's satisfaction – that the harm is irreparable" (*Stoney First Nation v Shotclose*, 2011 FCA 232 at para 48). Quite the contrary, there must "be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted" (*Gateway City Church* at para 16, citing *Glooscap* at para 31; see also *Janssen* at para 24).

[54] Furthermore, applicants must not be the architects of their own misfortunes. As stated by the FCA, “it would be strange if a litigant complaining of harm it caused itself, harm it could have avoided or repaired, or harm it still can avoid or repair could get such serious relief” (*Janssen* at para 24; see also *Western Oilfield* at paras 11–12).

(2) No irreparable harm

[55] In this case, the grounds of irreparable harm claimed by Ms. He are: (i) the damage to the Rivian Vehicle’s battery condition; and (ii) the loss of contemporary evidence on the conditions of the Rivian Vehicle that bears on her challenges of the Forfeiture and NEXUS Decisions. With respect, neither of these grounds meets the high threshold of irreparable harm.

(a) *Battery damage*

[56] The thrust of Ms. He’s argument for irreparable harm appears to be a fear of battery degradation in the Rivian Vehicle due to allegations of potential CBSA inaction. She indicates that she should be allowed to monitor her vehicle’s charging level and takes issue with the CBSA’s plan to ensure that the vehicle is properly charged.

[57] However, as indicated in *He Turley*, Ms. He’s assertions on the battery damage flowing from a failure to properly charge an electric vehicle are not based on any evidentiary support, apart from Ms. He’s own understanding. This evidence is based on assumptions, speculation, and arguable assertions which are unsupported by any objective evidence, all of which have been deemed insufficient by the FCA to constitute irreparable harm. Furthermore, while Ms. He

asserts that failing to charge the battery may render the Rivian Vehicle inoperable, she does not address why the battery cannot be replaced or repaired as needed, as was already done once (see also *He Turley* at paras 16–17). The record contains no demonstration, with particularity, of a real probability of harm that cannot be repaired later.

[58] In addition, the evidence on this motion shows that the Rivian Vehicle is being charged by the CBSA since February 23, 2026, and the suggestion that the charging process could stop or be inadequate between now and a decision on Ms. He's application for judicial review is purely speculative. There is no indication, let alone any evidence, that the CBSA's actions are currently damaging — or might damage — Ms. He's Rivian Vehicle.

[59] As mentioned by the AGC, since Ms. He was informed that her Rivian Vehicle was being successfully charged, she has not attempted to contact the CBSA to inquire into the charging status of the vehicle. Had she contacted the CBSA rather than brought this injunction motion, she would have learned, as illustrated by the evidence on this motion, that the CBSA has been diligently ensuring that the Rivian Vehicle is monitored and that the battery's charge levels have not dropped below the 69% to 71% range.

[60] There are two other reasons for which the alleged battery damage is not irreparable harm. First, the battery damage invoked by Ms. He is a harm that can clearly be compensated monetarily with an award of damages; it is a quantifiable loss. It is well recognized that harm which is quantifiable and compensable in monetary damages does not qualify as irreparable

harm opening the door to interlocutory injunctive relief (*RJR-MacDonald* at p 341; *Oshkosh* at para 24; *Shoan v Canada (Attorney General)*, 2016 FC 1031 at para 42). This is the case here.

[61] Second, Ms. He's concerns with the battery damage is avoidable harm. I agree with the AGC that Ms. He can take steps to avoid her alleged harm. As stated by Justice Turley, Ms. He "may take possession of her vehicle by paying the fine of $9,558.55 (in addition to any applicable provincial sales taxes and any other duties or taxes that may be due upon importation). If [Ms. He] is ultimately successful on judicial review, the amount of the fine would be refunded to her. There is no evidence before the Court that [Ms. He] is unable to pay this amount to secure the release of her vehicle and attend to charging the vehicle's battery" (*He Turley* a para 18). As will be discussed below, nothing at stake in these proceedings prevents Ms. He from avoiding her alleged harm.

[62] In sum, there is no clear, convincing, and non-speculative evidence demonstrating that the lack of an ability to monitor the Rivian Vehicle's change amounts to irreparable harm to Ms. He.

(b) *Loss of evidence*

[63] Ms. He further claims in her affidavit that the Rivian Vehicle was seized in its "collision-damaged condition" and that this physical condition is the central issue in her underlying judicial review. The CBSA's valuation, says Ms. He, did not account for the documented collision damage, despite her having provided a certified repair estimate totalling $19,474.56 USD from an authorized Rivian collision centre at the time of seizure. She asserts that the Forfeiture and

NEXUS Decisions expressly acknowledge receipt of this estimate, but that the valuation analysis contains no reference to it and applies no adjustment for the collision damage. She adds that the Rivian Vehicle, which is still in its damaged condition while in the CBSA's custody at the Douglas POE, is the physical evidence that the collision damage exists and that the repair estimate accurately reflects it. She thus argues that paying the terms of release and retrieving the vehicle would break the chain of custody over this evidence.

[64] With respect, I fail to see how this could amount to irreparable harm. In the context of this injunction motion and Ms. He's application for judicial review, this argument is ill-founded and without merit. It reflects a misunderstanding of the on-going process before this Court.

[65] Paying the terms of release and taking possession of the Rivian Vehicle will not change the evidence on the condition of the vehicle at the time of importation and seizure. Whether Ms. He will be successful or not in her challenges of the Forfeiture and NEXUS Decisions revolves around what was before the decision maker at the time of the decision, not on the current condition of the collision-damaged vehicle.

[66] It is inaccurate for Ms. He to say that retrieving the Rivian Vehicle would compromise the evidentiary integrity of the proceedings. The issues on her application for judicial review relate to what was done by the CBSA at the time of the decisions and relies on the evidence that was before the decision maker at that point in time. The condition of the vehicle at the time of importation and at the time of CBSA's Forfeiture and NEXUS Decisions is already on the record. And retrieving the Rivian Vehicle will not alter or destroy this evidence. The

reasonableness of the CBSA decisions will not be determined on the basis of any new assessments of damages on the Rivian Vehicle but on what was before the CBSA at the time of decision.

(3) Conclusion on irreparable harm

[67] In sum, having reviewed the totality of the evidence provided by Ms. He, I am not satisfied that, on a balance of probabilities, there is the required clear, compelling, and non-speculative evidence to demonstrate irreparable harm. Ms. He's allegations of harm are not supported by detailed, particularized, and specific evidence, they remain in the universe of speculations and hypotheticals, and they are harm that can be compensated monetarily and could be avoided by Ms. He.

[68] The second element of the *RJR-MacDonald* test is accordingly not met either.

C. *Balance of convenience*

[69] Since the *RJR-McDonald* tripartite test is conjunctive, and since Ms. He has failed to meet the first two prongs of the test, it is unnecessary to consider the balance of convenience.

V. Costs

[70] The general rule is that costs follow the event. The AGC, being successful on Ms. He's injunction motion, is thus entitled to its costs. I further agree with the AGC that costs are warranted in this case as Ms. He's motion was unnecessary and doomed to fail. Moreover, Ms.

He repeated some of the same arguments that were dismissed by Justice Turley two months ago in *He Turley*. Finally, the record illustrates that the CBSA has gone to great length to be accommodating and collaborative in its attempts to resolve Ms. He's concerns with the charging issues, but to little avail.

[71] However, I note that Ms. He has been partly successful in convincing the Court that the main reliefs sought in her motion were prohibitory and not mandatory. In the circumstances, and in the exercise of my discretion, I determine that an all-inclusive, lump-sum award of costs in the amount of $500 will be reasonable and justified, and shall be paid by Ms. He to the AGC.

VI. Conclusion

[72] For the above reasons, I conclude that the conditions of the *RJR-MacDonald* test for the issuance of an interlocutory injunction are not met. There are no exceptional circumstances justifying the intervention of the Court and the exercise of my discretion to grant the extraordinary relief sought by Ms. He. In the specific context of this case and considering all the circumstances, it would not be just and equitable to grant the prohibitory and mandatory orders sought by Ms. He.

[73] Costs in the all-inclusive, lump-sum amount of $500 are awarded to the AGC.

[74] On a final note, I can do no better than repeat the comment already made by Justice Turley in her Order (*He Turley* at para 22) and invite Ms. He to work with the CBSA and

counsel for the AGC in resolving the issues relating to the battery charging and the condition of the Rivian Vehicle, instead of multiplying interlocutory injunction motions before this Court.

ORDER in T-399-26

THIS COURT ORDERS that:

1. The Applicant’s motion for prohibitory and mandatory orders is dismissed.

2. Costs in the all-inclusive amount of $500 are awarded to the Respondent.

"Denis Gascon"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-399-26
STYLE OF CAUSE:	JING JING HE v ATTORNEY GENERAL OF CANADA

MOTION IN WRITING PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*

ORDER AND REASONS:	GASCON J.
DATED:	APRIL 21, 2026

APPEARANCES:

Jing Jing He	FOR THE APPLICANT (ON HER OWN BEHALF)
Philippe Alma	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Vancouver, British Columbia	FOR THE RESPONDENT