Federal Court Cour fédérale

Date: 20260211

Docket: T-399-26

Vancouver, British Columbia, February 11, 2026

PRESENT: The Honourable Madam Justice Turley

2026 CanLII 9775 (FC)

BETWEEN:

JING JING HE

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant's electric vehicle was seized by the Canada Border Services Agency [CBSA] at the Pacific Highway – Traffic port of entry in March 2025 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*]. The Applicant appealed the CBSA's enforcement action to the CBSA Recourse Directorate. To date, the vehicle remains in the CBSA's possession.

[2] By decision dated January 16, 2026, a Senior Appeals Officer of the CBSA Recourse Directorate [Officer] confirmed that the Applicant had contravened the *Customs Act* in failing to provide true, accurate, and complete information concerning the value of the vehicle at the time of importation. Further, the Officer determined that the vehicle was lawfully seized pursuant to paragraph 110(a) of the *Customs Act*. The Officer, however, reduced the original terms of release to a payment of $9,558.55. The Applicant has sought judicial review of this decision.

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[3] The Applicant brings a motion for injunctive relief. For the most part, the Applicant seeks mandatory injunctive relief — an order requiring the CBSA to charge her vehicle periodically and to maintain records of all charging sessions or, alternatively, an order requiring the CBSA to provide the Applicant or an authorized third party with supervised access to the vehicle to charge and maintain the vehicle's battery while it remails in the CBSA's custody.

[4] Additionally, the Applicant also seeks a prohibitive injunction, preventing the CBSA from selling, dismantling, disposing of, or altering the condition of the vehicle pending the Court's final determination of her judicial review application. At the hearing of the motion, Respondent's counsel confirmed that the CBSA will not take any such action while the underlying litigation is ongoing. On this basis, the Applicant acknowledged that a prohibitive injunction is unnecessary and elected not to pursue this relief further.

[5] I am dismissing the Applicant's motion because she has failed to satisfy the legal test for a mandatory injunction.

II. Analysis

[6] The well-established three-part test for interlocutory injunctive relief requires an applicant to establish that: (i) the underlying application raises a serious issue; (ii) they will suffer irreparable harm if an injunction is refused; and (iii) the balance of convenience favours the granting of an injunction: *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC), [1994] 1 SCR 311 [*RJR-MacDonald*] at 334.

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A. *The Applicant has failed to demonstrate a serious issue*

[7] In *R v Canadian Broadcasting Corp*, 2018 SCC 5 [*CBC*], the Supreme Court concluded that the *RJR-MacDonald* test applies to a request for a mandatory interlocutory injunction, with modification: *CBC* at paras 13–18. More particularly, at the first stage of the test, the Court held that an applicant must show a strong *prima facie* case, not simply that there is a "serious issue to be tried": *CBC* at paras 15, 18. The Court reasoned that this higher threshold is warranted because a mandatory injunction requires a defendant to take positive action, which is often more costly or burdensome: *CBC* at para 15.

[8] To demonstrate a strong *prima facie* case, an applicant must show "a *strong likelihood* on the law and the evidence presented" that they will ultimately be successful in the underlying proceeding: *CBC* at para 18 [emphasis in original]. The Applicant falls well short in this respect.

[9] In arguing there is a serious issue, the Applicant simply asserts that "[t]he underlying judicial review raises arguable issues regarding the seizure's legality": Applicant's Written Representations at para 8. No evidence or further submissions are made about the alleged errors

in the CBSA’s decision. I recognize that the Applicant is self-represented, but the burden remains on her to establish a strong *prima facie* case.

[10] Though not included in the Applicant’s motion record, I reviewed the Notice of Application in the underlying judicial review application; the listed grounds are very broad, alleging procedural unfairness and unreasonableness with limited details. The Applicant asserts that “[t]he Decision was reached through a process that was procedurally unfair because the decision-maker failed to meaningfully engage with central submissions and key evidence”: Notice of Application dated January 28, 2026 at para 3(a).

[11] According to the Officer’s decision, the Applicant 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. The Applicant was provided an opportunity to respond, and she submitted representations to the CBSA on April 25, 2025, May 1, 2025, June 24, 2025, June 25, 2025, June 26, 2025, and June 27, 2025: Letter dated January 16, 2026 at 3, Affidavit of Gaynor Holden affirmed February 5, 2026, Exhibit A, Respondent’s Motion Record at 7.

[12] In the absence of further submissions or any evidence about the alleged errors in the decision under review, I am unable to find that the Applicant has met her burden of demonstrating that there is a “strong likelihood” she will succeed in the underlying application for judicial review. As the Supreme Court explains, “[t]his is not an easy burden to discharge”: *CBC* at para 28.

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[13] While this finding is sufficient to dispose of the Applicant's motion, I have nevertheless considered whether the Applicant has demonstrated irreparable harm.

B. *The Applicant has failed to establish irreparable harm*

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[14] To establish irreparable harm, the onus is on the applicant to adduce clear, convincing, and non-speculative evidence that demonstrates a real probability that unavoidable irreparable harm will result if an injunction is not granted: *RJR-MacDonald* at 334, 348; *Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31 [*Glooscap*]. Furthermore, irreparable harm refers to 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.

[15] Here, the Applicant fails to meet the requisite threshold for proving irreparable harm. She argues that the irreparable harm is "[b]attery damage [that] is irreversible and cannot be compensated monetarily": Applicant's Written Representations at para 8. This assertion, however, is not based on any evidentiary support, but on the Applicant's own understanding.

[16] Indeed, the Applicant articulates the irreparable harm as follows in her affidavit:

> Based on my understanding and information from Rivian documentation and general knowledge of electric vehicle batteries, lithium-ion batteries like the one in the Vehicle suffer irreversible damage if left in a discharged state for extended periods. Such damage can render the battery inoperable, significantly reduce the Vehicle's value, or make it unsafe to operate. If the battery is not periodically charged to a minimal level (e.g., 30-50% state of charge), the Vehicle may become permanently damaged within days or weeks.
>
> Affidavit of Jingjing He affirmed February 2, 2026 [He Affidavit] at para 5, Applicant's Motion Record [AMR] at 7–8

[17] This evidence is insufficient to meet the high threshold for irreparable harm. It is based on assumptions, speculation, and arguable assertions which are unsupported by any objective evidence: *Glooscap* at para 31. Furthermore, while the Applicant asserts that failing to charge the battery may render the vehicle inoperable, she does not address why the battery cannot be replaced or repaired. It is incumbent on an applicant to demonstrate with particularity, "the actual existence or real probability of <u>harm that cannot be repaired later</u>" [emphasis added]: *Stoney First Nation v Shotclose*, 2011 FCA 232 at para 48. Rather, the Applicant simply states the vehicle "may become permanently damaged" without providing any evidentiary support: He Affidavit at para 5, AMR at 8.

[18] Furthermore, I find that the alleged harm to the vehicle is avoidable. As explained to the Applicant during the hearing, she 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 the Applicant is ultimately successful on judicial review, the amount of the fine would be refunded to her. There is no evidence before the Court that the Applicant is unable to pay this amount to secure the release of her vehicle and attend to charging the vehicle's battery.

[19] Given my finding that the Applicant has failed to prove irreparable harm, there is no need to consider where the balance of convenience lies.

III. Conclusion

[20] Based on the forgoing, the Applicant has failed to satisfy the requirements for a mandatory interlocutory injunction. The motion is therefore dismissed.

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[21] The Respondent is not seeking their costs, and I agree that, in the circumstances, none should be payable.

[22] On a final note, as Respondent's counsel advised the Applicant, both in correspondence and during the hearing, the CBSA is amenable to finding a solution to charging the vehicle's battery while her vehicle remains in custody. I encourage the Applicant to work with the CBSA to resolve this issue.

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ORDER in T-399-26

THIS COURT ORDERS that:

1. The Applicant's motion for a mandatory injunction is dismissed.

2. There is no order of costs.

"Anne M. Turley"

Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-399-26
STYLE OF CAUSE:	JING JING HE v THE ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	BY VIDEOCONFERENCE
DATE OF HEARING:	FEBRUARY 10, 2026
DATED:	FEBRUARY 11, 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

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