Federal Court Cour fédérale

Date: 20260331

Docket: T-5162-25

Ottawa, Ontario, March 31, 2026

PRESENT: Madam Associate Judge Sylvie M. Molgat

BETWEEN:

NABILA ISMAILZADA

Applicant

and

THE ATTORNEY GENERAL OF ONTARIO and CANADIAN REVENUE AGENCY (CRA)

Respondents

ORDER AND REASONS

UPON a letter from the Respondent, Attorney General of Canada [AGC], dated March 5, 2026 [Letter], having been referred to the Court;

[1] The AGC requests that the Court consider exercising its discretion under Rules 72 and 74 of the *Federal Courts Rules*, SOR/98-106 [*Rules*] to reject or remove the Notice of Application, compel the Applicant to file a motion for time extension to file her Notice of Application or issue any order the Court deems just.

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I. Overview

[2] The underlying application seeks judicial review of a decision rendered by Canada Revenue Agency on August 7, 2024, denying the Applicant's eligibility for the Canada Recovery Benefit [Decision].

[3] It is the AGC's position that the Applicant had until August 19, 2024, to serve a notice of application, and that she was out of time when she did so on December 15, 2025.

[4] In its Letter, the AGC states that this Court should remove the Applicant's Notice of Application for judicial review from the Court file pursuant to Rules 72 and 74 of the *Rules*.

[5] The AGC's reliance on Justice Stratas' decision in *Canada (Citizenship and Immigration) v Tennant*, 2018 FCA 132 [*Tennant*] is misplaced. The Letter is neither a motion (Rules 359, 364 and 369 of the *Rules*) nor does it comply with the *Amended Consolidated General Practice Guidelines* (June 20, 2025) governing informal motions for interlocutory relief (paras 41-42).

[6] For the reasons that follow, the Court declines to entertain the AGC's request.

II. Rules 72 and 74

[7] Rule 72(1) of the *Rules* provides that where a document is submitted for filing, the Administrator shall either accept the document for filing or, where the Administrator is of the opinion that the document is not in the form required by the *Rules* or that other conditions

precedent to its filing have not been fulfilled, refer the document without delay to a judge or associate judge.

[8] In that respect, it is important to note that Rule 72 applies only to the Chief Administrator appointed under section 5 of the *Courts Administration Service Act*, SC 2002, c 8, or a person acting on his or her behalf at the time a document is presented for filing.

[9] The application of Rule 72 is controlled by the Administrator and may not be invoked by a party seeking interlocutory relief.

[10] “Rule 72 and Rule 74 fulfil different purposes. Rule 72 concerns formal defects in a document presented for filing or the failure to satisfy conditions precedent for the filing of a document; Rule 74 deals with whether a document should be removed because it suffers from a fatal substantial defect, such as jurisdiction. See *Rock-St Laurent v. Canada (Citizenship and Immigration)*, 2012 FCA 192, 434 N.R. 144 at paras. 20-29”: *Tennant* at para 7.

[11] As for the application of Rule 74, in *Joorabdouz v Canada (Citizenship and Immigration)*, 2026 FC 152 (CanLII), my colleague, Associate Judge Trent Horne, recently set out how any requests that documents be removed from the Court file should be made:

> [9] […] The Court has observed an increase in requests from litigants, particularly respondents, to have documents removed from the Court file. Orders and directions have been issued as to the proper use of Rule 74, but the practice continues.
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> [10] Rule 74 provides that the Court may, at any time, order that a document be removed from the Court file if it was not filed in accordance with the Rules or an Act of Parliament, is scandalous, frivolous, vexatious or clearly unfounded, or is otherwise an abuse

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of process, provided that all interested parties have been given an opportunity to make submissions. Rule 74 is intended to address the excessive or disproportionate use of rights under the Rules, such as the use of procedures to delay cases and the adoption of behaviours disproportionate to the objective of achieving an expeditious, just and cost-effective judicial decision. Some litigants bring multiple proceedings and motions respecting the same matter or initiate proceedings that clearly have no chance of success (*Gaskin v Canada*, 2023 FC 1542 [*Gaskin*] at para 16). An appeal of *Gaskin* was dismissed in an unreported decision in Court file A-194-23 on January 18, 2024; an application for leave to appeal to the Supreme Court of Canada was also dismissed (docket #41223).

[11] The Federal Court of Appeal has determined that the combined effect of Rule 74 (prior to recent amendments), Rule 4 (the gap rule), and Rule 55, alongside its plenary powers, granted the Court jurisdiction to summarily dismiss a proceeding that is abusive of the Courts process (*Coote v Canada (Human Rights Commission)*, 2021 FCA 150 at paras 16-18; *Dugré v Canada (Attorney General)*, 2021 FCA 8 at paras 19-21). Following amendments to Rule 74(1), the Court can now order that a document be removed from the court record on additional grounds, similar to those applicable to motions to strike (*Gaskin* at paras 17-18).

[12] Simply put, the process leading to a decision under Rule 74 to remove a document from the Court file (or not) is engaged only at the Court's initiative. It is not a process that parties can initiate, or that they control. Rule 74 is not engaged because a party writes a letter to the Court and asks that a document be removed from the Court file. Except in extreme circumstances, which are not present here, the Court will not remove a document from the Court file based on a unilateral request from one of the parties. Both Rule 74 and principles of procedural fairness require that parties be given the opportunity to be heard before an order is made.

[13] When a party is of the view that a document is improperly on the Court file, whether an originating document, motion record or otherwise, there are two options. The first is to bring a motion, such as a motion to strike. The second is to write to the Court and request that the Court exercise its discretion and issue an order or direction giving notice to the party that filed the document that submissions are required as to whether it was properly filed. If the Court elects to use Rule 74, and that decision rests entirely with the Court, a timetable will typically be set for the exchange of submissions as to whether the document should be removed from the Court file.

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> [14] Rule 74 is not a substitute for a motion to strike. If the Court engages the process under Rule 74, the party filing the document must provide reasons as to why it should stay on the Court file. A party bringing a motion to strike bears the burden of demonstrating that the applicable test has been satisfied. A party cannot independently circumvent a motion to strike and reverse the onus by writing a short letter to the Court referring to Rule 74.
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> [15] Who controls whether the Rule 74 process is triggered is a meaningful distinction. When the Court chooses to engage Rule 74, there will be a specific order or direction advising the party who filed the document as to the nature of the Court's concerns, and at least a timetable for exchange of submissions, if not an opportunity for an oral hearing. When parties write to the Court requesting Rule 74 relief, as the respondent did here, it is not always apparent to the party who filed the document whether the Rule 74 process is engaged, whether submissions need to be filed, or when. An unregulated exchange of correspondence is inefficient for all stakeholders.

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III. Analysis

[12] The AGC submits that the Notice of Application contains shortcomings that can be addressed under both Rules 72 and 74 of the *Rules*. I disagree.

[13] The Decision under review is dated August 7, 2024. The Applicant indicates in her Notice of Application for judicial review that she did not receive the Decision letter until December 2, 2025: Rule 301(c)(ii) of the *Rules*. The Notice of Application was filed 13 days later.

[14] The AGC contends that the Applicant is out of time to file such an application pursuant to subsection 18.1(2) of the *Federal Courts Act*, RSC 1985, c F-7, and that she failed to obtain an extension of time.

[15] In the present case, Rule 72 is not engaged. The Notice of Application was accepted for filing by the Registry on December 15, 2025, and was not referred to the Court by the Administrator pursuant to Rule 72(1)(b) of the *Rules*.

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[16] The AGC then served and filed a Notice of Appearance on January 7, 2026. The AGC also transmitted the certified tribunal record in accordance with Rule 318 of the *Rules* on January 8, 2026.

[17] Two months later, the AGC now requests that the Court "reject or remove the Notice of Application, compel the Applicant to file a motion for a time extension to file her Notice of Application or issue any order this Court deems just."

[18] As Associate Judge Horne noted, the Court is receiving an increasing number of requests that documents be immediately or unilaterally removed from the Court file under Rule 74 of the *Rules*, almost all of which are improper. In my view, this is one of them.

[19] Assuming (although it is not stated in the Letter) that the AGC's position is that the Notice of Application was not filed in accordance with the *Rules*, an order of the Court or an Act of Parliament as contemplated in Rule 74(1)(a), it is by no means evident that the pleading, on its face, "suffers from a fatal substantial defect."

[20] In the present circumstances, the Court declines to grant the relief sought in the AGC's Letter.

ORDER in T-5162-25

THIS COURT ORDERS that the Attorney General of Canada's request that the Court consider exercising its discretion pursuant to Rule 72 or 74 of the *Federal Courts Rules* is dismissed.

"Sylvie M. Molgat"
Associate Judge

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