Federal Court Cour fédérale

Date: 20260206

Docket: T-234-23

2026 CanLII 8903 (FC)

Toronto, Ontario, February 6, 2026

PRESENT: The Honourable Madam Justice Heneghan

BETWEEN:

ADAN MCINTOSH

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

REASONS AND ORDER

[1] By a notice of motion dated January 27, 2026, and filed on February 28, 2026, Mr. Adan McIntosh (the "Applicant") seeks "clarification" of the Judgment of Justice Pallotta issued on September 11, 2024. That Judgment dismissed an application for judicial review filed by the Applicant in respect of three decisions of the Canadian Judicial Council, dismissing complaints filed against three judges of the Ontario Superior Court.

[2] The Attorney General of Canada (the “Attorney General”) was named as the Respondent in that application.

[3] On March 7, 2025, the Applicant commenced an action in this Court, in cause number T-787-25, by the issuance of a statement of claim naming the Attorney General as the Defendant. The Applicant, as the Plaintiff, claimed a breach of his rights pursuant to the *Charter of Rights and Freedoms*, *Part I of the Constitution Act*, 1982, being Schedule B to the *Canada Act 1982,* 1982, c. 11 (UK) (the “Charter”) and sought the award of damages in the amount of $20,000.00.

[4] On January 9, 2026, Justice Fuhrer granted a motion filed by the Attorney General of Canada to remove the statement of claim from the Court files and further struck out the statement of claim without leave to amend. In her reasons, she found that the action commenced by the Applicant amounted to a collateral attack on the Judgment of Justice Pallotta.

[5] In his notice of motion, the Applicant sets out the following grounds:

1. The order provided by Justice Pallotta either contains ambiguities or is not written in plain enough English for certain judges and lawyers to understand.

2. The Responding Party has written to the court and provided submissions that rely upon the order of Justice Pallotta but are inconsistent with it and do not appear cognisant of the actual meaning of the order regarding the CJC’s ability to control its own process;

3. In an order dated 9th January 2026, Justice Fuhrer appears to take the position of the Responding that is inconsistent with and not cognisant of the actual meaning of Justice Pallotta’s order, calling the contrary a collateral attack of that decision;

4. This motion is a matter of public importance which extends far beyond the relevance of the parties.

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[6] On February 2, 2026, the Attorney General filed written submissions in response to the Applicant's notice of motion. He raised two arguments: first, that the Court lacks jurisdiction to entertain the Applicant's motion because the Court is *functus officio* and second, that the Judgment of Justice Pallotta does not require "clarification".

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[7] The Applicant referred to and relies upon paragraph 24 of the decision in *Canadian Doctors for Refugee Care v. Canada (Attorney General)*, 2015 FC 149 where Justice Mactavish said the following:

> In *Wong v. Canada (Minister of Citizenship and Immigration) (1998)*, 1998 CanLII 8848 (FC), 159 F.T.R. 154, [1998] F.C.J. No. 1791, this Court did issue an order purporting to clarify an earlier judgment in light of subsequent events. However, it appears from the Court's brief reasons that both parties sought the clarification, and no issue was raised as to the Court's continuing jurisdiction over the matter: see para. 8. This decision is thus of limited assistance.

[8] The Applicant did not refer to preceding paragraphs in *Canadian Doctors for Refugees, supra* where Justice Mactavish reviewed the principles of *functus officio*, that is in paragraphs 7 to 11.

[9] The *Federal Courts Rules*, S.O.R/98-106 (the "Rules") do not provide for a motion for "clarification". As noted by the Court in *Canadian Doctors for Refugee Care, supra*, there are provisions for the Court to reconsider the terms of an order and to correct clerical mistakes, and to vary or set aside an order. I refer to Rules 397 and 399 which address these respective circumstances and provide as follow:

Motion to reconsider

397 (1) Within 10 days after the making of an order, or within such other time as the Court may allow, a party may serve and file a notice of motion to request that the Court, as constituted at the time the order was made, reconsider its terms on the ground that

(a) the order does not accord with any reasons given for it; or

(b) a matter that should have been dealt with has been overlooked or accidentally omitted

Setting aside or variance

399 (1) On motion, the Court may set aside or vary an order that was made

(a) *ex parte*; or

(b) in the absence of a party who failed to appear by accident or mistake or by reason of insufficient notice of the proceeding,

if the party against whom the order is made discloses a *prima facie* case why the order should not have been made.

Setting aside or variance

(2) On motion, the Court may set aside or vary an order

(a) by reason of a matter that arose or was discovered subsequent to the making of the order; or

(b) where the order was obtained by fraud.

Effect of order

(3) Unless the Court orders otherwise, the setting aside or variance of an order under subsection (1) or (2) does not affect the

Réexamen

397 (1) Dans les 10 jours après qu’une ordonnance a été rendue ou dans tout autre délai accordé par la Cour, une partie peut signifier et déposer un avis de requête demandant à la Cour qui a rendu l’ordonnance, telle qu’elle était constituée à ce moment, d’en examiner de nouveau les termes, mais seulement pour l’une ou l’autre des raisons suivantes:

a) l’ordonnance ne concorde pas avec les motifs qui, le cas échéant, ont été donnés pour la justifier;

b) une question qui aurait dû être traitée a été oubliée ou omise involontairement.

Annulation sur preuve *prima facie*

399 (1) La Cour peut, sur requête, annuler ou modifier l’une des ordonnances suivantes, si la partie contre laquelle elle a été rendue présente une preuve *prima facie* démontrant pourquoi elle n’aurait pas dû être rendue :

a) toute ordonnance rendue sur requête *ex parte*;

b) toute ordonnance rendue en l’absence d’une partie qui n’a pas comparu par suite d’un événement fortuit ou d’une erreur ou à cause d’un avis insuffisant de l’instance.

Annulation

(2) La Cour peut, sur requête, annuler ou modifier une ordonnance dans l’un ou l’autre des cas suivants :

a) des faits nouveaux sont survenus ou ont été découverts après que l’ordonnance a été rendue;

b) l’ordonnance a été obtenue par fraude.

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validity or character of anything done or not done before the order was set aside or varied.

Effet de l'ordonnance

(3) Sauf ordonnance contraire de la Cour, l'annulation ou la modification d'une ordonnance en vertu des paragraphes (1) ou (2) ne porte pas atteinte à la validité ou à la nature des actes ou omissions antérieurs à cette annulation ou modification.

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[10] In *Canada v. Greenwood* 2024 FCA 22 the Federal Court of Appeal addressed the principle of *functus officio* in paragraph 44 as follows:

> Simply put, the functus officio doctrine provides that once a matter is finally ruled upon, the judge has discharged its office and cannot re-open the matter. Indeed, to do so would impede on "orderly appellate procedure" (*Canadian Broadcasting Corp. v. Manitoba*, 2021 SCC 33, 461 D.L.R. (4th) 635 at para. 34).

[11] The Applicant argues that the reasons of Justice Pallotta are ambiguous and were misunderstood and not followed by Justice Fuhrer in her decision upon the Attorney General's motion to remove the statement of claim in cause number T-787-25 from the Court files.

[12] The Applicant submits that an appeal of the Order of Justice Fuhrer would be unnecessary if the Court "clarified" the Judgment of Justice Pallotta. However, the Applicant is not seeking clarification of the "Judgment" but rather of certain words in the "Reasons" of Justice Pallotta.

[13] The Applicant takes issue with the second sentence of paragraph 37 of those reasons. Paragraph 37 provides as follows:

> While Mr. McIntosh filed complaints against other judges, the issues before me relate to the CJC's decisions in the Shore

> Complaint, the Morawetz Complaint, and the McWatt Complaint. The CJC's decision that it would not respond to further correspondence concerning the matter did not deprive Mr. McIntosh of a right to have those complaints heard. Furthermore, the CJC was acting within its mandate to control its process**.**

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[14] In paragraph 19 of his written representations filed in support of his motion, the Applicant says the following:

> Justice Pallotta explicitly states that the CJC's decision that it would not respond to further correspondence concerning "the matter," namely the complaints against Shore, Morawetz and McWatt, "did not deprive Mr. McIntosh of a right to have those complaints heard"

[15] The Applicant pleads that an appeal of the Order of Justice Fuhrer would be unnecessary if the Court now "explained" what was meant by Justice Pallotta at paragraph 37 of her reasons.

[16] No Court has the authority to "re-write" reasons.

[17] The Court has limited authority to correct orders.

[18] In *Canadian Doctors for Refugees, supra*, Justice Mactavish dismissed a motion for "directions" and "clarification" of her earlier judgment; see paragraph 5. In paragraph 24 of her reasons, she referred to the decision in *Wong v. Canada (Minister of Citizenship and Immigration)*, (1998), 159 F.T. R. 154 where the Court purported to "clarify" an earlier judgment in view of subsequent events.

[19] I note that the statutory context in *Wong, supra* was the immigration context, a very different context from that prevailing in the litigation undertaken by the Applicant *vis á vis* the Canadian Judicial Council.

[20] The Applicant has the right to appeal the Order of Justice Fuhrer. “Order” is defined in Rule 2 of the Rules as follows:

order includes **a)** a judgment; **b)** a decision or other disposition of a tribunal; and **c)** a determination of a reference under section 18.3 of the Act. (ordonnance)	**ordonnance** Sont assimilés à une ordonnance : **a)** un jugement; **b)** une décision ou autre mesure prise par un office fédéral; **c)** une décision rendue dans le cadre d’un renvoi visé à l’article 18.3 de la Loi. (order)

[21] Paragraph 27(1)(c) of the *Federal Courts Act* R.S.C., 1985, c. F-7 (the “Act”), allows such an appeal and provides as follows:

27 (1) An appeal lies to the Federal Court of Appeal from any of the following decisions of the Federal Court: … **(c)** an interlocutory judgment;	**27 (1)** Il peut être interjeté appel, devant la Cour d’appel fédérale, des décisions suivantes de la Cour fédérale: … **c)** jugement interlocutoire;

[22] The definition of “judgment” in section 2 of the Act includes the Judgment such as the one made by Justice Pallotta and provides as follows:

final judgment means any judgment or other decision that determines in whole or in part any substantive right of any of the parties in controversy in any judicial proceeding	***jugement définitif*** Jugement ou autre décision qui statue au fond, en tout ou en partie, sur un droit d’une ou plusieurs des parties à une instance.

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[23] According to the Court files, no appeal has been taken from the Judgment of Justice Pallotta.

[24] In the result, the Applicant’s motion is dismissed.

[25] The Respondent seeks costs in the event the motion is dismissed.

[26] Rule 400(1) of the Rules gives the Court full discretion in the matter of costs. In the usual course, costs are awarded to the successful party.

[27] Although Counsel for the Attorney General did not appear upon the hearing of the motion, written representations were filed. The Attorney General opposed the Applicant’s motion and succeeded in his opposition.

[28] In the exercise of my discretion, I award costs in the amount of $250.00 to the Attorney General, inclusive of disbursements and taxes.

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ORDER IN T-234-23

THIS COURT ORDERS that the motion is dismissed, with costs to the Attorney General of Canada in the amount of $250.00, inclusive of disbursements and taxes.

"E. Heneghan"
Judge

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FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-234-23
STYLE OF CAUSE:	ADAN MCINTOSH v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 4, 2026
REASONS AND ORDER:	HENEGHAN J.
DATED:	FEBRUARY 6, 2026

APPEARANCES:

Adan McIntosh	(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT

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