Federal Court Cour fédérale

Date: 20250118

Docket: T-60-25

Citation: 2025 FC 105

Ottawa, Ontario, January 18, 2025

PRESENT: THE CHIEF JUSTICE

BETWEEN:

DAVID JOSEPH MACKINNON AND ARIS LAVRANOS

Applicants

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS – MOTION TO EXPEDITE

I. Introduction

[1] In the present Motion, the Applicants seek to expedite the hearing of their underlying application for judicial review (the "**Application**"). The Respondent opposes the Motion.

[2] Among other things, the Application requests an Order setting aside the decision by Prime Minister Trudeau (the **"Prime Minister"**) "to advise ... the Governor General of Canada, (the "**Governor General**"), to exercise her prerogative power to prorogue the first session of the 44th Parliament of Canada until Monday, March 24, 2025 (the "**Decision**")." The Application also requests a declaration that this session of Parliament has not been prorogued.

[3] The Applicants maintain that their Application is "truly urgent and requires the Court's immediate attention to determine whether the Parliament can immediately resume sitting to protect Canada's interests in the face of … threatened actions by the United States." Those threatened actions are stated to be "President-Elect Trump's stated intention to impose a 25% tariff on all goods entering the United States from Canada" on "his first day in office as President" (the **"25% Tariff"**).

[4] Requests to abridge the standard timelines that apply to proceedings in this Court essentially require the Court to strike a balance between access to justice and what is procedurally fair to the other party to the dispute.

[5] In conducting this exercise, the Court typically considers the urgency of the matter, any potential prejudice to the other party and whether the relief sought will be moot if the matter is not expedited.

[6] In addition to considering the interests of the parties, the Court will assess the public interest and whether other litigants would be prejudiced by having to wait longer to have their matters heard.

[7] For the reasons that follow, this Motion will be granted. In brief, the factors that weigh in favour of expediting the hearing of the Application include the urgency of the matter, the fact that the core relief sought will become moot if the Court's usual timelines are not abridged and the public interest in determining the serious issues raised in the Application as expeditiously as reasonably possible. Collectively, these factors outweigh (i) any prejudice the Respondent and interveners may suffer if the hearing of the Application is expedited as contemplated below, and (ii) the fact that the Court would not have the benefit of any additional or better submissions that parties and the interveners may have made if they had additional time. No prejudice to other litigants will occur, because no other currently scheduled hearings will be delayed by expediting the hearing of the Application.

[8] I pause to note that after Prime Minister Boris Johnson advised Her Late Majesty of his decision to prorogue the Parliament of the United Kingdom of Great Britain and Northern Ireland (the "**UK Parliament**") on August 27 or 28, 2019, the proceedings that were immediately launched by Mrs. Gina Miller proceeded all the way to the United Kingdom Supreme Court ("**UKSC**") in a matter of weeks: *R (Miller) v The Prime Minister*, [2019] UKSC 41 [***Miller II***] at paras 1, 19 and 25. Those proceedings then culminated in a judgment handed down by that Court less than one month after the Prime Minister's advice was given to Her Late Majesty. I recognize that the circumstances surrounding that case permitted and compelled the UKSC to deal with the matter more quickly than would be appropriate in the present case. Nevertheless, that case demonstrates that complex constitutional issues, including those that go to the heart of our democratic system of government, can be effectively heard and determined on an expedited basis when necessary.

II. The Parties

[9] The Applicants are Canadian citizens who reside in Nova Scotia.

[10] The Attorney General of Canada represents the interests of, and responds to the allegations made in the Application against, the Prime Minister and the Governor General.

III. Background

[11] On November 25, 2024, President-elect Trump posted a message on the "Truth Social" social media application ("**Truth Social**") advising that on his first day in office he would "sign all necessary documents to charge Mexico and Canada a 25% Tariff on ALL products coming into the United States." He explained that this "Tariff will remain in effect until such time as Drugs, in particular Fentanyl, and all Illegal Aliens stop the Invasion of our Country."

[12] Two days later, the Premiers of Canada's provinces and territories reportedly met virtually with the Prime Minister and certain senior members of the federal Cabinet to discuss the 25% Tariff.

[13] Beginning on December 10, 2024, the President-elect made successive posts on Truth Social in which he referred to the Prime Minister and Canada as the "Governor" and the "Great State of Canada," respectively. The President-elect also issued posts describing various benefits that Canadians would gain by becoming "the 51st State."

[14] On December 18, 2024, the current session of Parliament was adjourned for its holiday recess. At that time, the House of Commons was scheduled to resume sittings on January 27, 2025.

[15] On December 16, 2024, then-Finance Minister Chrystia Freeland resigned from Cabinet by way of an open letter. In that letter, she stated, among other things, that "[o]ur country today faces a grave challenge. The incoming administration in the United States is pursuing a policy of aggressive economic nationalism, including a threat of 25 per cent tariffs."

[16] On January 6, 2025, Prime Minister Trudeau held a press conference in which he announced the Decision and his intention to resign as Prime Minister. He added that he had requested the president of the Liberal Party of Canada to begin the process of selecting the party's next leader.

[17] Later that day, the *Canada Gazette* Part II, Extra vol. 159, No. 1, was published, containing the Governor General's Proclamation Proroguing Parliament to March 24, 2025.

[18] During a press conference on January 7, 2025, President-elect Trump was asked whether he was "considering military force to annex and acquire Canada." He replied: "No, economic force because Canada and the United States, that would really be something …" [emphasis added].

[19] On January 8, 2025, the Applicants filed the underlying Application. In addition to the relief described at paragraph 2 above, the Application seeks an order dispensing with the normal time limits pertaining to applications for judicial review, and granting an urgent and expedited hearing of the Application.

[20] Later that day, I issued an order putting this proceeding into special case management and designating Associate Judge Trent Horne and myself as the Case Management Judges.

[21] On January 9, 2025, I issued an oral direction scheduling a case management conference for 11:00 a.m. (ET) the following morning by video conference. My intention was to discuss with the parties the Applicants' request (in their Application) for an urgent and expedited hearing of the Application.

[22] That evening, I received a copy of the Applicants' Motion Record for the present Motion. In their Notice of Motion, the Applicants seek:

(a) an order, pursuant to Rule 8(1) of the *Federal Courts Rules*, SOR/98-106 (the "**Rules**"), dispensing with the regular timelines that would apply to the hearing of the Application and providing for a hearing of the Application on an expedited basis, as soon as possible;

(b) an order, pursuant to Rule 383 and/or 384 of the Rules, directing that this proceeding continue as a specially managed proceeding — as noted at paragraph 20 above, this has already been done; and

(c) such further and other relief as counsel may request and this Court considers appropriate.

[23] During the case management conference on Friday January 10, 2025, counsel to the Respondent explained that they had not yet received instructions regarding the Applicants' request for an expedited hearing. Counsel agreed to seek such instructions over the weekend and to advise the Court before 2:30 p.m. on Monday, January 13, 2025 as to whether the Respondent intended to oppose the present Motion. Counsel also agreed that, if they received instructions to oppose the Motion, they would file their written submissions by noon on Thursday, January 16, 2025.

[24] Counsel to both parties further agreed that, in the event that the Motion proceeded on a contested basis, it should be determined in writing, without the need for a hearing.

[25] On January 13, 2025, the Respondent advised the Court that the Respondent intended to oppose the Motion.

[26] That same day, Democracy Watch informed the Court of its intent to file a Motion to seek leave to intervene in this proceeding. To date, it has not yet filed that Motion. It did not file any submissions on the present Motion.

[27] On January 16, 2025, counsel for the University of Ottawa Public Law Centre Constitutional Law Initiative (the "**Initiative**") wrote to the Court to advise of the Initiative's

intention to bring a motion seeking leave to intervene and the Court's guidance as to the appropriate timing for its motion. That guidance will be provided in the coming days.

[28] I pause to note that the Amended Notice of Application filed in the underlying proceeding states:

> 15. In recent months, the leaders of all of the major opposition parties with significant seat counts in the House of Commons have also repeatedly announced their intention to support a motion of non-confidence in the current government at the earliest opportunity.

[29] The Applicants did not mention any of the above-mentioned announcements in their Notice of Motion or in their written submissions. Accordingly, they will not be considered in the reasons below.

IV. Issue

[30] The sole issue raised on this Motion is whether to dispense with the regular timelines set out in the Rules and order an expedited hearing of the Application.

V. Applicable Legal Principles

[31] Pursuant to Rule 8, the Court has discretion to extend a period provided by the Rules or fixed by an order. However, Rule 8 does not identify any criteria to guide the exercise of that discretion.

[32] Generally speaking, the timelines set forth in the Rules are designed to give the parties "adequate time to prepare the case so that the Court can properly decide the matter before it, thereby rendering justice to the parties, while also respecting the objective of deciding the matter without delay;" and "[a]ny departure from these rules – and especially an abridgement – is exceptional.": *Gordon v Canada (Minister of National Defence)*, 2004 FC 1642 at para 17; *Canadian Wheat Board v Canada (Attorney General)*, 2007 FC 39 [***CWB***] at para 14. See also *Ezimokhai v Canada (Citizenship and Immigration)*, 2022 FC 1452 [***Ezimokhai***] at para 14.

[33] The party requesting an expedited hearing bears the burden of establishing that the Court should abridge the normal timeless set forth in the rules: *St-Cyr v Canada (Attorney General)*, 2021 FC 107 [***St-Cyr***] at para 18; *Alani v Canada (Prime Minister)*, 2015 FC 859 [***Alani***] at para 15; *Conacher v Canada (Prime Minister)*, 2008 FC 1119 [***Conacher***] at para 18; *CWB* at para 14.

[34] In considering whether to grant a request to abridge the standard timelines set forth in the Rules, this Court typically considers the following four factors:

i. Whether the proceeding is really urgent or the moving party simply prefers the matter be expedited;

ii. Whether prejudice will ensue to the responding party if the matter is expedited;

iii. Whether the matter will be moot if it is not expedited; and

iv. Whether expediting the matter will prejudice other litigants by jumping the queue.

Lak v Canada (Citizenship and Immigration), 2024 FC 578 at para 10; *St-Cyr* at paras 16–17; *Ezimokhai* at para 13; *Alani* at para 14; *Conacher* at para 16; *CWB* at para 13. See also *May v CBC/Radio Canada*, 2011 FCA 130 [***May***] at paras 12–13; *Canada (Minister of Citizenship and Immigration) v Dragan*, 2003 FCA 139

> [***Dragan***] at para 7; *McCulloch v Canada (Attorney General)*, 2020 FC 565 [***McCulloch***] at para 12; *Trotter v Canada (Auditor General)*, 2011 FC 498 [***Trotter***] at paras 5–6; *Apotex Inc v Wellcome Foundation*, 1998 CanLII 7960 at paras 2–3.

[35] In determining whether a proceeding is truly urgent, the Court considers whether it will be too late to grant a practical remedy if the matter is heard according to the standard timelines: *McCulloch* at para 13. In conducting this analysis, it is important to assess whether the applicant delayed in bringing the application: *McCulloch* at para 15; *Conacher* at paras 2, 5 and 19–21; *CWB* at paras 18–19; *Trotter* at para 15; *St-Cyr* at para 8.

[36] In assessing prejudice to the responding party, the Court may consider the nature and complexity of the proceeding: *McCulloch* at para 21; *Alani* at para 18; *Trotter* at paras 7 and 20; *Conacher* at paras 22–25; *CWB* at para 21. If the issues raised and the evidentiary record are not complex, this will weigh in favour of granting the request for an expedited hearing: *McCulloch* at paras 21–23. However, if those issues or the evidentiary record are complex, this will weigh against granting the request. This is particularly so where constitutional issues are raised: *May* at para 16; *Alani* at para 18; *Trotter* at paras 7, 16, 20 and 22; *Conacher* at paras 4, 22 and 25; *CWB* at para 21.

[37] In assessing the question of mootness, the Court will consider not only whether the matter will become moot if the hearing is not expedited, but also whether the matter may still warrant a hearing even after it has become moot: *Conacher* at para 28; *Dragan* at para 9; *St-Cyr* at para 29.

[38] In considering whether to grant a request to expedite a proceeding, the Court also considers the public interest, which can permeate its assessment of multiple factors: *McCulloch* at para 15; *May* at paras 13 and 17; *Trotter* at paras 6 and 17–22.

[39] It bears underscoring that no single factor will necessarily be determinative in the Court's assessment of whether to grant a request for a proceeding to be heard on an expedited basis, provided that any expedited schedule would ensure that the proceeding remains fair.

VI. Assessment

A. *Does the Application raise issues that should be determined on an urgent basis?*

(1) The Applicants' position

[40] The Applicants submit that this factor weighs heavily in favour of granting an expedited hearing. In support of their position, they identify constitutional and practical considerations.

[41] With respect to constitutional considerations, the Applicants contend that a shutdown of Parliament for over ten weeks, if brought about by the Prime Minister without lawful authority, represents a grave threat to Canada's democracy, its Parliamentary system and the rule of law.

[42] Regarding practical considerations, the Applicants maintain that President-elect Trump's threat to impose the 25% Tariff on his first day in office constitutes a grave and unprecedented threat to Canada's economic security and sovereignty.

[43] Given the foregoing, the Applicants assert that if the hearing of the Application is not expedited, Parliament will remain unable to perform its constitutional role of overseeing, supervising and otherwise assisting the government at a critical time. This includes using the legislative tools at its disposal to respond to the threatened 25% Tariff.

[44] In further support of their position, the Applicants reference the expedited timeline achieved in *Miller II*, described at paragraph 8 above. They assert that, given the apparent similarities between the circumstances in *Miller II* and those in the present situation, this Court ought to approach this proceeding with a similar level of urgency.

(2) The Respondent's position

[45] The Respondent submits that the Applicants' claimed need for an urgent remedy is misstated and unjustified.

[46] Among other things, the Respondent maintains that Courts have agreed to expedite matters in exceptional circumstances where direct or irreparable harm would result from proceeding in accordance with the normal time frames. The Respondent states that the Applicants have failed to demonstrate any of the types of harms necessary to warrant expediting the hearing of the Application. Instead, the Respondent maintains that the issues raised by the Applicants are speculative, general and are not susceptible to being resolved by the remedy sought.

[47] The Respondent also notes that the executive branch of government will continue to function during the time that Parliament is prorogued. This includes the government's conduct of foreign relations and economic and trade policy, the holding of Cabinet meetings, the making of spending and policy decisions, and dealing with threats to public peace. The Respondent adds that the suggestion that economic challenges would require Parliament to initiate a legislative process during the relevant time period is speculative. In any event, it maintains that the Prime Minister retains the ability to advise the Governor General to summon Parliament at any time during prorogation.

[48] The Respondent further asserts that the practical effect of the prorogation will not materially impair Parliament's role or oversight function, because the prorogation will cover a total of only 5 weeks of scheduled sitting times in the House of Commons after taking account of regularly scheduled recess time. As a further practical matter, the Respondent adds that Parliament would not be in session for long if the Applicants prevail in the underlying Application and the possible non-confidence motion announced by all major opposition parties (and referenced in the Application) is successful. In any event, the Respondent maintains that this potential outcome is speculative, because the government in fact has the confidence of the house. It states that this was recently demonstrated by (i) the passage of Bill C-78, *An Act respecting temporary cost of living relief (affordability)* on November 28, 2024, (ii) the defeat of a non-confidence motion on December 9, 2024, and (iii) the passage of Bill C-79, *An Act for granting to His Majesty certain sums of money for the federal public administration for the fiscal year ending March 31, 2025*, on December 10, 2024.

[49] Finally, the Respondent maintains that *Miller II* is distinguishable both in terms of the legal differences between the constitutions of the UK and Canada, and in terms of the factual circumstances in which it arose. The Respondent states that when the question of the prorogation came before the UKSC in September 2019, the Court recognized that the circumstances were quite exceptional. Following the Brexit referendum, a fundamental change was due to take place in the UK's Constitution on October 31, 2019. Pursuant to the *European Union (Withdrawal) (No 2) Act 2019*, 2019 C 26 (UK), the UK Parliament had oversight over the withdrawal process, and the House of Commons had already demonstrated by previous motions that it did not support the Prime Minister on this critical issue. The Respondent adds that earlier proceedings challenging a potential decision to prorogue had been commenced by backbench Members of Parliament in July and considered by two levels of Court prior to arriving at the UKSC. By contrast, in the present proceeding, the parties will be required for the first time to marshal the necessary evidence and prepare to appropriately articulate the relevant constitutional legal issues.

[50] The Respondent further notes that, in contrast to *Miller II*, there is no impending statutory deadline or fundamental constitutional change that warrants urgent consideration of the matters at issue in this Application.

(3) Analysis

[51] I agree with the Applicants that the Application raises issues that should be determined on an urgent basis. I also agree that the nature of those issues is such that this factor should weigh heavily in favour of granting the Applicants' request for an expedited hearing.

[52] In the present context, the urgency factor overlaps with the mootness factor to be considered by the Court.

[53] An important part of the relief sought on the underlying Application is an Order "setting aside the Decision and declaring that the first session of the 44th Parliament of Canada has not been prorogued." If the Application is not scheduled to be heard on an expedited basis, that relief will become moot. This is an important consideration in assessing whether the matter is urgent: *McCulloch* at para 13.

[54] Beyond the foregoing, in her open resignation letter, former Finance Minister Chrystia Freeland characterized the 25% Tariff as posing "a grave challenge" to Canada that needs to be taken "extremely seriously."

[55] That challenge is pressing and urgent because President-elect Trump has threatened to impose the 25% Tariff swiftly upon assuming office on January 20, 2025.

[56] If the underlying Application is not scheduled to be heard on an expedited basis, there will be no opportunity for Canada's elected representatives to debate this serious threat and take any action that they may consider appropriate for over two months following President-elect Trump's assumption of office.

[57] The fact that the executive branch of government will continue to function during the period that Parliament is prorogued is beside the point. The fact remains that there would be no

opportunity for Parliament to carry out its constitutional functions, including by availing itself of legislative tools at its disposal, for a significant period during which Canada will likely face a grave challenge. As the UKSC observed in *Miller II* at para 2 about the Westminster system upon which Canada's parliamentary government is modeled:

> While Parliament is prorogued, neither House can meet, debate and pass legislation. Neither House can debate Government policy. Nor may members of either House ask written or oral questions of Ministers. They may not meet and take evidence in committees.

[58] It is in the public interest that the issues raised on the underlying Application be determined before the end of the prorogation period announced in the Governor General's Proclamation, namely, March 24, 2025.

[59] Contrary to the Respondent's position, the urgent nature of those issues is not speculative. Among other things, and beyond the above-mentioned statement of former Finance Minister Freeland, the fact that Prime Minister Trudeau convened a meeting with the Premiers of Canada's provinces and territories two days after the President-elect's threatened 25% Tariff attests to the pressing nature of that threat. Moreover, while one can only speculate about what, if anything, Parliament might do if given the opportunity to address the "grave challenge" posed by the threatened 25% Tariff, the fact remains that the underlying Application seeks to restore that opportunity for Parliament. Whether the Applicants will be successful in that regard remains to be determined.

[60] I recognize that the House of Commons Sitting Calendar only provided for five weeks of sitting during the period of prorogation, after taking account of regularly scheduled recess time,

including during the March Break. I accept that it will not be possible to schedule the hearing of the Application in time to potentially recover the first three of those weeks (January 27, 2025 to February 14, 2025), while at the same time ensuring that the proceeding remains fair. However, it is possible to schedule a fair proceeding that will preserve the possibility of granting the relief sought by the Applicants in relation to the other two weeks, namely the weeks of February 24, 2025 and March 17, 2025. If Parliament were able to resume its functions for even one of those weeks, that would provide a meaningful opportunity for it to debate the threatened 25% Tariff, pose questions to Ministers and otherwise fulfil its constitutional role. Moreover, the Court understands that even if the House of Commons would not sit during the scheduled recess between the two weeks mentioned above, it would still be possible for Parliamentary committees to conduct work.

[61] There is no evidence currently before the Court regarding potential for this meaningful opportunity to be negated if the potential non-confidence motion referenced by the Respondent (and in the Application) succeeds. As noted at paragraph 29 above, the possibility of such a non-confidence vote being brought immediately upon any potential reopening of Parliament prior to March 24, 2025 is not something that the Applicants raised on this Motion. Nor did they address the potential implications that the Prime Minister's intent to resign may have for possible future confidence votes. If the Respondent is correct that the government has the confidence of the House of Commons, then the meaningful opportunity described above would not in fact likely be eliminated by a non-confidence vote.

[62] With respect to the Respondent's submissions regarding *Miller II*, I acknowledge that the circumstances surrounding that case permitted and compelled the UKSC to deal with the matter more quickly than would be appropriate in the present case. That does not negate the fact that the issues raised in the current proceeding are sufficiently urgent, exceptional and compelling to warrant an abridgment of the regular timelines applicable to Applications in this Court.

[63] Having regard to the foregoing, I find that the underling Application raises serious issues that should be determined on an urgent basis. These issues are such as to weigh heavily in favour of granting the Applicants' request for an expedited hearing.

[64] Given that the Application was filed within two days of the Decision becoming public, no issue of delay on the part of the Applicants arises.

[65] It bears emphasizing that the present circumstances are exceptional and compelling.

B. *Will the Respondent suffer prejudice if the matter is expedited?*

(1) The Applicants' position

[66] The Applicants acknowledge that this proceeding presents a novel legal question. However, they maintain that it will likely not require an onerous evidentiary record. They add that the Decision and the context surrounding it are public matters that are not in dispute.

[67] Citing *Spruce Credit Union v The Queen*, 2014 TCC 42 at para 32 and *McCulloch* at para 23, the Applicants further assert that the Department of Justice has been recognized to be "Canada's largest law firm" and a "sophisticated part[y]" that has the "ability to work under compressed timelines when the nature of the case requires it." Consequently, the Applicants submit that the Respondent has the resources to respond on an expedited basis and will not be prejudiced by an abridgement of the usual timelines.

(2) The Respondent's position

[68] The Respondent states that the underlying Application raises constitutional and legal issues which fairness requires the parties have sufficient time to advance. It maintains that expediting the hearing of the Application will prejudice its ability to prepare a response that is proportionate to the significant and novel constitutional issues that have been raised.

[69] Based on the jurisprudence cited at the end of paragraph 36 above, the Respondent adds that this Court and the Federal Court of Appeal have consistently refused to expedite complex constitutional matters, including because of the meticulous legal submissions warranted by the complexity of such cases. The Respondent submits that the present situation is further compounded by the fact that this will be the first time prorogation is challenged before this Court. It adds that the complexity of the hearing will be further increased by the fact that it will be raising issues of standing, justiciability, reviewability and the appropriate remedy. It states that these issues are not amenable to proper determination within a highly truncated timeline.

[70] More specifically, the Respondent insists that any deviation from the standard timelines set forth in the Rules can be presumed to cause prejudice, and that the scheduling of an expedited hearing to be heard before March 24 would reduce the timelines by likely more than half. In support of this submission, the Respondent notes that the steps to be completed before the hearing include the following:

i) serving of the Applicants' affidavit(s) on the Application;

ii) serving of the Respondent's affidavit(s) on the Application, if any;

iii) serving of the Applicants' reply affidavit(s), if any;

iv) cross-examinations, if any, by the parties on the affidavits;

v) filing of the Applicants' record, including the Applicants' memorandum of fact and law;

vi) filing of the Respondent's record, including the Respondent's memorandum of fact and law; and

vii) the additional steps that will be required in relation to the interveners.

[71] Having regard to the foregoing, the Respondent maintains that the Application could not realistically be ready for a hearing and determination until close to late March, 2025. Considering the additional time that will be needed by the Court to deliberate and render reasons, the Respondent contends that it would not be in the interests of justice, reasonably feasible, or

fair to the parties for the hearing of the Application be scheduled before the end of the prorogation period.

[72] Finally, the Respondent submits that an expedited schedule would also prejudice others who may seek to either bring their own application in relation to the Decision, or to intervene in the present proceeding.

(3) Analysis

[73] I acknowledge that this proceeding raises complex constitutional and other issues, and that the Court might benefit from any additional or refined submissions the parties might make if they had the benefit of the regular timelines set forth in the Rules.

[74] I also accept that the Respondent will suffer some prejudice if those timelines are abridged.

[75] However, I consider that the schedule set forth in the Order below will provide the Respondent with a fair opportunity and sufficient time to make detailed and considered submissions. Specifically, the deadline of noon on February 7, 2025 for filing the Respondent's record would provide the Respondent with almost three weeks from the date of this decision and over four weeks from the date the underlying Application was filed.

[76] I recognize that this Court has consistently refused to expedite complex constitutional matters. However, in most of those cases, the requested schedule was much more compressed

than what is set forth in the Order below. In one of those cases, the applicant sought a hearing and a decision in approximately 48–72 hours: *Trotter* at paras 3 and 16. In another, this timeline was six days: *May* at para 15. In *Conacher*, the applicants requested that the case be heard in less than one week: *Conacher* at para 1. In *Dragan*, the Court was called upon to schedule and decide an appeal within 19 days: *Dragan* at para 13.

[77] The remaining cases cited by the Respondent are also distinguishable. Specifically, in *Alani*, the Court found that there were no "compelling reasons" to rush into an early hearing on the merits, as the applicant's claimed urgency was "rather speculative" and it was unlikely that there would be any practical benefit from an expedited process: *Alani* at paras 18, 21 and 23. In *CWB*, the applicant was found to have created a false sense of urgency through its own delay: *CWB* at para 19.

[78] Indeed, in all but one of these cases that involved an application, the applicants' own delay was a key consideration in refusing to expedite the proceeding: see *May* at para 11; *Conacher* at paras 2 and 19; *Trotter* at para 15. By contrast, and as mentioned above, the Applicants in this matter filed their Notice of Application only two days after the prorogation was announced to the public.

[79] In summary, I accept that the Respondent will suffer some prejudice if the regular timelines set forth in the Rules are abridged. Despite this finding, I consider that in the particular circumstances of this case, the schedule set forth in the Order below will ensure that the proceeding remains fair to all concerned. Those particular circumstances, including the urgency

of the matter and the public interest in resolving it within a period of time to have a potential practical impact, provide "compelling reasons" for expediting the hearing of the underlying Application. I am confident that the sophistication and resources of the Department of Justice will enable it to rise to the challenge: see paragraph 67 above.

C. *Will the Application be rendered moot if it is not expedited?*

(1) The Applicants' position

[80] The Applicants submit that there is a material possibility that if this proceeding is not expedited, and is heard on or after March 24, 2025, the remedy they seek in the Application will be "compromised by the passage of time" (*McCulloch* at para 13) and may be deemed to be moot by this Court. The specific remedy to which they refer in this regard is their request for an Order setting aside the Decision and declaring that the first session of the 44th Parliament of Canada has not been prorogued.

(2) The Respondent's position

[81] The Respondent maintains that the Applicants' concern about mootness is attenuated because the Respondent does not intend to argue that this proceeding would be moot in the event that this Application is not heard or decided until after the prorogation period ends.

[82] The Respondent adds that it is not unusual for this Court to entertain and decide matters that are moot, especially issues of a constitutional and likely precedential nature.

(3) Analysis

[83] I agree with the Applicants that the core relief they seek in the underlying Application will be rendered moot if the hearing of this proceeding is not expedited. That relief is an Order "setting aside the Decision and declaring that the first session of the 44th Parliament of Canada has not been prorogued." It is readily apparent that if the Application is not scheduled to be heard in a time frame that will permit the Court to issue its decision prior to March 24, 2025, that relief will become moot.

[84] The Respondent's observation that "[i]t is not unusual for this Court to entertain and decide matters that are moot, especially issues of a constitutional and likely precedential nature," misses the mark. The fact that the Court might exercise its discretion to hear the underlying Application at a point in time after March 24, 2025 provides cold comfort to the Applicants, despite the Respondent's representation that it would not then argue mootness. If Parliament did not resume until after that date, the practical relief sought by the Applicants will have been lost. Insofar as that core relief is concerned, they will have been deprived of access to justice.

[85] In summary, the fact that the core relief sought on the underlying Application will become moot if the Application is not heard in time for the Court's decision to have a practical effect is a factor that weighs in favour of granting this Motion.

D. *Would expediting the hearing of the Application prejudice other litigants by jumping the queue?*

(1) The Applicants' position

[86] The Applicants state that they are not aware of any prejudice that will be suffered by other litigants if this proceeding is expedited.

(2) The Respondent's position

[87] The Respondent submits that, in circumstances of limited judicial resources, expediting one proceeding will inevitably delay others.

[88] The Respondent further notes that a record number of applications for judicial review have been filed in the past year and that the Court anticipates a further increase in its workload.

[89] In addition, the Respondent notes that the Court has recently acknowledged the inevitable impact on parties to other proceedings if a case is expedited: *Ezimokhai* at para 21; *Lak* at para 18.

(3) Analysis

[90] Notwithstanding the Court's unprecedented and growing workload, expediting the hearing of this Application would not prejudice other litigants by causing them to wait longer for their matters to be heard. Stated differently, hearing this matter on an expedited basis would not delay the hearing of other proceedings. All currently scheduled hearings will continue to proceed as scheduled. Consequently, no issue of prejudice to other litigants arises.

VII. Conclusion

[91] Given the findings and conclusions set forth above, this Motion will be granted.

[92] In brief, the factors that weigh in favour of expediting the hearing of the underlying Application include the urgency of the matter, the fact that the core relief sought will become moot if the Court's standard timelines are not abridged, and the public interest in having the serious issues raised in the Application determined as expeditiously as reasonably possible. Collectively, these factors outweigh (i) any prejudice the Respondent and interveners may suffer if the hearing of the Application is expedited as contemplated below, and (ii) the fact that the Court would not have the benefit of any additional or better submissions that parties and the interveners may have made if they had additional time. No prejudice to other litigants will occur, because no other currently scheduled hearings will be delayed by expediting the hearing of the Application.

[93] I recognize that it would also be in the public interest for the parties and the intervenors to have more time to prepare their submissions, and for the Court to have the benefit of those submissions. However, I find that there is a countervailing and greater public interest in having the serious issues raised by the Applicants determined in time to preserve the possibility that Parliament be in a position to address, for a meaningful period of time prior to March 24, 2025, the "grave challenge" that the threatened 25% Tariff poses to Canada.

[94] Having regard to the interests of the Applicants, the Respondent and the general public, I consider that the schedule set forth in the Order below will ensure that this proceeding is fair to all concerned. On balance, the greater public interest in having issues which go to the heart of

our democracy heard and determined by the Court in time to have a practical impact provides exceptional and compelling reasons for abridging the regular timelines in the Rules.

VIII. Costs

[95] In their Motion, the Applicants stated that they do not seek costs. The Respondent did not take a position regarding costs.

[96] Accordingly, no costs will be ordered on this Motion.

THIS COURT ORDERS that:

1. This Motion is granted. The timelines set forth in the Rules for the hearing of Applications in this Court shall not apply to this Application. Instead, the schedule for the hearing of this Application shall be as follows:

    a. The Applicants shall serve supporting affidavits and documentary evidence, and file proof of service, by January 22, 2025.

    b. The Respondent shall serve supporting affidavits and documentary evidence, and file proof of service, by 10:00 am. on January 27, 2025.

    c. The parties shall complete any cross-examinations by January 29, 2025.

    d. The Applicants shall serve and file an Applicants' Record by February 3, 2025.

    e. The Respondent shall serve and file a Respondent's Record by noon on February 7, 2025.

    f. Any interveners who may be granted leave to intervene shall serve and file their submissions by February 10, 2025.

    g. The Applicants and Respondent shall provide any reply that they may wish to make to submissions made by any Interveners who are granted leave to intervene, orally at the hearing. In that eventuality, they may also each file a written reply of up to five pages by February 18, 2025.

h. The hearing shall take place in Ottawa on February 13 and 14, 2025.

2. Given that this proceeding was placed into special case management on January 8, 2025, it is unnecessary to address this aspect of the relief sought in the Notice of Motion.

"Paul S. Crampton"
Chief Justice

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-60-25
STYLE OF CAUSE:	DAVID JOSEPH MACKINNON AND ARIS LAVRANOS v CANADA (ATTORNEY GENERAL)

MOTION IN WRITING DATED JANUARY 9, 2025, CONSIDERED AT OTTAWA, ONTARIO, PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES*.

REASONS FOR ORDER AND ORDER:	CRAMPTON C.J.
DATED:	JANUARY 18, 2025

WRITTEN REPRESENTATIONS BY:

James Manson Hatim Kheir	FOR THE APPLICANTS Received January 10, 2025
Elizabeth Richards Zoe Oxaal Sanam Goudarzi Loujain El Sahli	FOR THE RESPONDENT Received January 16, 2025

SOLICITORS OF RECORD:

CHARTER ADVOCATES CANADA Toronto, ON	FOR THE APPLICANTS
ATTORNEY GENERAL OF CANADA Ottawa, ON	FOR THE RESPONDENT