Federal Court Cour fédérale

Date: 20250509

Docket: T-792-25

Citation: 2025 FC 866

Ottawa, Ontario, May 9, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

PETER WU

Applicant

and

CANADIAN JUDICIAL COUNCIL (CJC)
SCREENING OFFICER ROBIN MACKAY
AND CANADIAN JUDICIAIL COUNCIL

Respondent

ORDER AND REASONS

[1] On April 2, 2025, the Attorney General of Canada [the AGC] wrote to the Court and requested that the Court remove the Applicant Mr. Wu's Notice of Application from the Court file in this proceeding pursuant to Rule 74(1)(a), (b) and (c) of the *Federal Courts Rules*, SOR/98-106 [the *Rules*].

[2] Rule 74(2) of the *Rules* provides the Court may only make an Order pursuant Rule 74(1) if all interested parties have been given an opportunity to make submissions.

[3] On April 4, 2025, Mr. Wu filed three (3) pages of single-spaced written submissions in response to the AGC's request without having been directed or asked by the Court to do so. Whether Mr. Wu served his written submissions upon the AGC is not clear from either Mr. Wu's submissions or the Court file as no Certificate of Service or other proof of service has been filed by Mr. Wu.

[4] I have considered the AGC's request, Mr. Wu's submissions in response, as well as the content of Mr. Wu's Notice of Application as issued and filed with the Court on March 7, 2025.

[5] I am satisfied that all interested parties have been given an opportunity to make submissions as contemplated by Rule 74(2) in connection with the AGC's request pursuant to Rule 74(1) of the *Rules*.

[6] For the reasons that follow, Mr. Wu's Notice of Application shall be removed from the Court file for this proceeding pursuant to Rule 74(1)(b) and (c) of the *Rules*, without the ability to refile. As there is no originating document in the Court file, this proceeding shall also be dismissed pursuant to Rule 168 of the *Rules*.

I. The Law Applicable to the Request

[7] Rule 74 of the *Rules* provides the Court with the discretion to order the removal of a document from the Court file in the circumstances set out in the Rule and as developed by the jurisprudence interpreting and applying the Rule. Rule 74 reads as follows:

Removal of Documents **74 (1)** Subject to subsection (2), the Court may, at any time, order that a document be removed from the Court file if the document	**Retrait de documents** **74 (1)** Sous réserve du paragraphe (2), la Cour peut, à tout moment, ordonner que soient retirés du dossier de la Cour :
(a) was not filed in accordance with these Rules, an order of the Court or an Act of Parliament;	**a)** les documents qui n'ont pas été déposés en conformité avec les présentes règles, une ordonnance de la Cour ou une loi fédérale;
(b) is scandalous, frivolous, vexatious or clearly unfounded; or	**b)** les documents qui sont scandaleux, frivoles, vexatoires ou manifestement mal fondés;
(c) is otherwise an abuse of the process of the Court.	**c)** les documents qui constituent autrement un abus de procédure.
Opportunity to make submissions **(2)** The Court may only make an order under subsection (1) if all interested parties have been given an opportunity to make submissions.	**Occasion de présenter des observations** **(2)** La Cour ne peut rendre une ordonnance en vertu du paragraphe (1) que si elle a donné aux parties intéressées l'occasion de présenter leurs observations.

[8] Justice Lafrenière explained the rationale for Rule 74 in *Gaskin v. Canada*, 2023 FC 1542, at paras 16 to 20 (*Gaskin*). I can do no better than to reproduce his words here and to adopt them as my own:

[16] By way of background, Rule 74 was amended following recommendations made in a report submitted by a subcommittee to the Rules Committee over a decade ago, on October 16, 2012: see Canada Gazette, Part I, Vol 155, No 15 (April 10, 2021). According to the report, public consultations revealed a broad consensus that certain parties sometimes make excessive or disproportionate use of rights under the Rules. These excesses include 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. Such proceedings often languish in the justice system, wasting limited judicial resources. Self-represented litigants often bring multiple proceedings and motions for the same matter. They also sometimes initiate proceedings that clearly have no chance of success. Consequently, it became evident that decision-makers needed new tools to regulate proceedings.

[17] Prior to the amendments, Rule 74 allowed the Court to order, on its own initiative, that a document could be removed from the Court file if it had not been filed in accordance with the Rules, an order of the Court, or an Act of Parliament, but only after all interested parties had been given an opportunity to be heard.

[18] In recent years, the Federal Court of Appeal held that the combined effect of Rule 74 (as it then was), 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 Court's 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.

[19] With the addition of paragraphs (b) and (c) to Rule 74(1), this Court can now order that a document be removed from the court record on additional grounds, similar to those applicable to motions to strike found at paragraphs (c) and (f) of Rule 221(1). Moreover, by replacing the words "to be heard" with "to make submissions" in Rule 74(2), it is clearly intended that the matter of removal of a document would normally be addressed in writing, with the onus placed equally on all parties, and not necessarily by making oral submissions in court at an in-person hearing.

[20] These amendments came into effect on January 13, 2022.

[9] An Order that an originating document be removed from the Court file effective dismisses the underlying proceeding (*Dona v. Canada (Attorney General),* 2024 FC 92, at para 21).

II. The Underlying Notice of Application

[10] Mr. Wu's originating document is presented in the form of an application for judicial review pursuant to sections 18 and 18.1 of the *Federal Courts Act*, RSC, c F-7, and Part VI of the *Rules*. He has named himself as the applicant and has named Robin Mackay, a screening officer designated by the Canadian Judicial Council [the CJC Screening Officer] and the Canadian Judicial Council [the CJC] itself as respondent parties.

[11] Mr. Wu has pleaded that he seeks judicial review of the CJC Screening Officer's decision dated February 21, 2025, dismissing his application for the reconsideration of their earlier decision that dismissed Mr. Wu's complaint against a federally appointed judge who had presided over a proceeding he had commenced against the City of Toronto before the Superior Court of Justice in Ontario sitting in Toronto, Ontario [the Motions Judge].

[12] The Motions Judge against whom Mr. Wu had filed a complaint pursuant to the *Judges Act*, RSC 1985, c J-1 (the *Judges Act)* had made an Order on July 23, 2024, that dismissed Mr. Wu's motion to add parties and amend his pleading and granted summary judgment dismissing Mr. Wu's claim against the City of Toronto.

[13] Mr. Wu appealed from the July 23, 2024, Order to the Court of Appeal for Ontario.

[14] On November 1, 2024, the Court of Appeal for Ontario dismissed Mr. Wu's appeal following the City of Toronto's request that the court do so pursuant to Rule 2.1.01(2) of the *Rules of Civil Procedure*, RRO 1990, O.Reg.194 [the Ontario Rules], The Court wrote as follows at paras 4 and 5 of its decision published as *Wu v. Toronto (City)*, 2024 ONCA 810:

> [4] […] The appellant's appeal has all the hallmarks of frivolous and vexatious litigation: see, for example, *Scaduto v. The Law Society of Upper Canada*, 2015 ONCA 733, 343 O.A.C. 87, leave to appeal refused, [2015] S.C.C.A. No. 488; and *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720. The appellant replaced his initial 46-page notice of appeal with a 67-page amended notice of appeal. Both contain very long narrations and a litany of complaints including allegations of unparticularized conspiracies and frauds about by-law amendments to, as Mr. Wu states in his amended notice of appeal, "block discovery of the property's right being stolen". But neither puts forward any arguable ground of appeal. The appeal has no chance of success.
>
> [5] We see no error in the motion judge's careful and thorough reasons that clearly explain why the proposed addition of parties and untenable amendments was not permitted, and why the claim should be dismissed on summary judgment. As the motion judge explained:
>
> > Mr. Wu has sadly become a vexatious litigant. He is indefatigable in digging for documents, altering his narrative to fit new-found facts, drafting lengthy documents that take time to read and digest – like unanswerable requests to admit – and then re-writing new versions of them so they have to be read, analyzed, and synthesized all over again.

[15] Rule 2.1.01(1) of the Ontario Rules is a summary procedure that was enacted to provide a means for the disposal of vexatious litigation instituted by litigants that had not been declared vexatious litigants (Derek McKay, Editor, *Garry D. Watson and Micheal McGowan's Ontario Civil Practice 2020*, (Toronto: Thomson Reuters Canada) at 337). The procedure provides the Superior Court of Justice with the ability to dismiss a proceeding that appears on its face to be

frivolous or vexatious or otherwise an abuse of the process of the court. Rule 2.1.01(1) of the Ontario Rules contains regulatory language that is the near reflection of Rule 74(1)(b) and (c) of the *Rules*. Rule 2.1.01(1) of the Ontario Rules and Rule 74 of the *Rules* provide a procedural vehicle that leads to the same destination: the summary dismissal of proceedings that are frivolous or vexatious.

[16] Mr. Wu sought leave to appeal from the Court of Appeal for Ontario's dismissal of his appeal to the Supreme Court of Canada. His application for leave to appeal was dismissed by the Supreme Court of Canada on May 1, 2025 (*Peter Wu v. City of Toronto*, 2025 CanLII 38370 (SCC).

[17] Mr. Wu alleges in his application for judicial review that the CJC Screening Officer breached the *Judges Act* when handling his complaint about the Motion Judge's alleged judicial misconduct. Mr. Wu pleads that the CJC Screening Officer breached subsection 90(1) and paragraphs 90(2)(a), (b) and (c) of the *Judges Act*, as well as paragraphs 6.7(2)(c) of the *Canadian Judicial Council Procedures for the Review of Complaints or Allegations About Federally Appointed Judges*, effective April 2025 (the *Review Procedures (2025)*) by incorrectly categorizing four alleged instances of misconduct to be within the domain of the Motion Judge's decision. By doing so, he alleges, the CJC Screening Officer miscarried his job and duty.

[18] Mr. Wu also pleads that the CJC Screening Officer ignored or did not review his complaints that the subject judge falsified facts, ignored and hid complaints and evidence, did

not render decisions on his complaints and evidence, was not impartial, and did not maintain the minimum standards of a legal proceeding.

[19] Mr. Wu seeks a judgment that:

a) requires to the CJC to correct and withdraw its "illegal" decision to dismiss his complaints;

b) orders the CJC to allow Mr. Wu to present his complaint to the CJC reviewing members or a CJC review panel; and,

c) requires the CJC to review his case according to the laws and the constitution.

[20] Paragraphs 10 to 56 of the application for judicial review contains allegations regarding the content of his action against the City of Toronto, the content of pleadings, various aspects of motion records filed in the proceeding before the subject judge at first instance, as well as the various grounds that Mr. Wu alleges substantiate errors by the Motions Judge at first instance.

[21] Mr. Wu alleges that these various errors of the Motions Judge are in fact instances of judicial misconduct which he categorizes as:

a) falsified facts;

b) ignoring and hiding complaints and evidence;

c) not rendering decisions to complaints and evidence; and,

d) not maintaining the minimum standard of legal proceedings.

III. The AGC's Submissions

[22] The AGC relies on Rules 74(1)(a), (b) and (c) of the *Rules* as the basis for the removal of Mr. Wu's application for judicial review from the Court file.

[23] The AGC submits that Mr. Wu's application for judicial review was not filed in accordance with the *Rules* and can be removed from the Court file pursuant to Rule 74(1)(a) because the originating document improperly names the CJC and the individual CJC Screening Officer who were involved in the underlying decision as the respondent parties, contrary to Rule 303(1) of the *Rules.* The AGC relies on *Canada (Attorney General) v Zalys*, 2020 FCA 81 at para 22 (*Zalys*) in support of his argument.

[24] The AGC also submits that the application for judicial review, on its face, is an attempt to re-litigate Mr. Wu's claims against the City of Toronto which were dismissed by the Motions Judge and whose dismissal was upheld by the Court of Appeal for Ontario. Mr. Wu's attempt to re-litigate these issues is itself frivolous, vexatious and/or is an abuse of process such that the requirements of Rule 74(1)(b) and (c) are made out.

[25] The AGC also submits that limited judicial resources should not be expended on applications such as Mr. Wu's because it has no chance of success (*Gaskin v Canada*, 2023 FC 1542 at paras 16, 21).

IV. Mr. Wu's Submissions

[26] Mr. Wu submits that his application for judicial review is not an attempt to relitigate his claim against the City of Toronto but is properly an application for judicial review of the dismissal of his complaint against the Motions Judge.

[27] Mr. Wu's submissions largely repeat that which he has alleged in his originating document and that I have summarized above. He submits that he does not wish to address the errors in the decisions at first instance in this proceeding. He emphasizes that his interest in this proceeding is with respect to his allegations that the CJC Screening Officer "dodge the facts and law of this case about judge's judicial misconducts".

[28] He reiterates that this proceeding concerns the *Judges Act* and the *Review Procedures (2025)* as well as the CJC Screening Officer's absence of authority to dismiss a complaint regarding judicial misconduct. He submits that judicial misconduct complaints are to be determined by the CJC, not by a CJC Screening Officer. He also submits that he is seeking for this Court to decide if the Motions Judge engaged in judicial misconduct, and if the CJC Screening Officer really breached the *Judges Act* and the *Review Procedures (2025)* when he dismissed Mr. Wu's request to reconsider his decision to dismiss his complaint.

V. Analysis

a) Rule 74(1)(a) – Document not filed in accordance with the Rules

[29] Rule 303 of the *Rules* reads as follows with respect to the identification of the respondent party on an application for judicial review:

Respondents

303 (1) Subject to subsection **(2)**, an applicant shall name as a respondent every person

(a) directly affected by the order sought in the application, other than a tribunal in respect of which the application is brought; or

(b) required to be named as a party under an Act of Parliament pursuant to which the application is brought.

Application for judicial review

(2) Where in an application for judicial review there are no persons that can be named under subsection (1), the applicant shall name the Attorney General of Canada as a respondent.

Substitution for Attorney General

(3) On a motion by the Attorney General of Canada, where the Court is satisfied that the Attorney General is unable or unwilling to act as a respondent after having been named under subsection (2), the Court may substitute another person or body, including the tribunal in respect of which the application is made, as a respondent in the place of the Attorney General of Canada.

Défendeurs

303 (1) Sous réserve du paragraphe **(2)**, le demandeur désigne à titre de défendeur :

a) toute personne directement touchée par l'ordonnance recherchée, autre que l'office fédéral visé par la demande;

b) toute autre personne qui doit être désignée à titre de partie aux termes de la loi fédérale ou de ses textes d'application qui prévoient ou autorisent la présentation de la demande.

Défendeurs — demande de contrôle judiciaire

(2) Dans une demande de contrôle judiciaire, si aucun défendeur n'est désigné en application du paragraphe (1), le demandeur désigne le procureur général du Canada à ce titre.

Remplaçant du procureur général

(3) La Cour peut, sur requête du procureur général du Canada, si elle est convaincue que celui-ci est incapable d'agir à titre de défendeur ou n'est pas disposé à le faire après avoir été ainsi désigné conformément au paragraphe (2), désigner en remplacement une autre personne ou entité, y compris l'office fédéral visé par la demande.

[30] The AGC is quite correct in his submissions that Mr. Wu has commenced his proceeding and has filed his application for judicial review in a manner that is not in accordance with Rule 303(1)(a) of the *Rules*. The respondent parties named in this proceed ought not to be the CJC or the CJC Screening Officer, but rather the AGC in accordance with Rule 303(2) unless the AGC brings a motion pursuant to Rule 303(3) of the *Rules*.

[31] Defects in the identification of the responding parties named in an originating document are not an unusual occurrence and can in appropriate circumstances be resolved quickly through a motion for relief against joinder pursuant to Rule 104 of the *Rules*. No such motion has been brought in this case to this point in time.

[32] Considering the AGC's reliance on *Zalys* and the Federal Court of Appeal's consensus therein at paras 1 and 26 that it was appropriate considering Rules 303(1) and (2) of the *Rules* to substitute the AGC as the proper party on the appeal instead of the improperly named RCMP well after the proceeding had ben commenced and argued, the Court is not persuaded that the defect in the description of the respondent parties in the underlying application for judicial review in this proceeding is sufficient on its own to cause the removal of the application for judicial review from the Court file.

b) Rules 74(1)(b) and (c) – The Document is scandalous, frivolous, vexatious or clearly unfounded, or otherwise an abuse of process

[33] A document that is scandalous, frivolous or vexatious pursuant to the *Rules* and the relevant jurisprudence includes an originating document such as an application for judicial review (Rule 63(1)(d), 74(1), 300 and 301 of the *Rules*) in which the applicant presents no rational argument based upon the evidence or law in support of his sought relief, or where the pleading is so clearly futile that it has not the slightest chance of success, where it improperly casts a derogatory light on someone with respect to their moral character, or where the proceeding is commenced maliciously, without probable cause or not leading to a practical result (*Pfizer Inc. v. Apotex Inc.* (1999), 1999 CanLII 8371 (FC); *Steiner v. Canada (1996)*, 1996 CanLII 3869 (FC); *Ruman v. Canada*, 2005 FC 389; *Hutton v. Sayat*, 2024 FC 601 at para 26; *Cannon v. Canada*, 2024 FC 1746, at para 6; *Zhao-Jie v TD Waterhouse Canada Inc*., 2024 FC 261, at para 7; *Sauve v Canada*, 2010 FC 217, at para 38).

[34] It also includes an application for judicial review that does not comply with the rules of pleading set out in Rule 301 that are applicable to an application. These rules of pleading include and require that an application set out a precise statement of the relief sought along with a complete and concise statement of the grounds intended to be argued, including a reference to any statutory provision or rule to be relied upon (Rules 301(d) and (e) of the *Rules*).

[35] An application for judicial review may also be frivolous or vexatious or an abuse of process if it fails to state a cognizable administrative law claim that can be brought in the Federal Court; seeking relief that the Court cannot grant may also be scandalous, frivolous or vexatious (*Gaskin*, at paras 24 and 30)

[36] A document that is otherwise an abuse of process pursuant to Rule 74(1)(c) of the *Rules* includes a document that misuses the Court's procedure and one that can lead to no possible good (*Gaskin*, at para 31). A document would be considered an abuse of process where its content represents the relitigation of issues in different judicial forums and in connection with different relief sought. Differences of forum and relief do not preclude a claim or an application from being abusive. Proceeding with such relitigation undermines the doctrine of finality and respect for the administration of justice (*Mancuso v. Canada (National Health and Welfare)*, 2015 FCA 227, at paras 39 to 45 (*Mancuso*); *Ewert v. Canada (Attorney General*), 2025 FC 676, at paras 26-33).

[37] I have reviewed Mr. Wu's application for judicial review in order to gain a realistic appreciation of its essential character by reading it holistically without fastening onto matters of form over substance. I have no difficulty in finding that his application for judicial review is frivolous, vexatious and an abuse of process.

[38] As mentioned above, paragraphs 10 to 56 of Mr. Wu's application for judicial review is a relatively well detailed recitation of the errors of law, mixed fact and law, and of fact that Mr. Wu alleges the Motion Judge committed during the hearing and in his decision dismissing Mr. Wu's motion and granting summary judgment to the City of Toronto. These alleged errors are categorized by Mr. Wu as instances of judicial misconduct consisting of falsifying facts, ignoring and hiding complaints and evidence, not rendering decisions to complaints and evidence, not maintaining the minimum standard of legal proceedings.

[39] A holistic reading of Mr. Wu's allegations shows clearly that the thrust of his application for judicial review is not judicial misconduct but that he disagrees with and finds error in the Motion Judge's findings of fact, determinations of objections, exercise of judicial discretion during his proceeding, appreciation of relevant and irrelevant facts and evidence, his determinations of fact based on the evidence led, his determinations of objections to the evidence led, and his appreciation, determination and application of the law in light of the admitted evidence and arguments made before him.

[40] These alleged errors have been recast in the application now filed in this Court as examples of judicial misconduct despite that they are, reasonably assessed, matters related to the substance of judicial decision-making such as the exercise of judicial discretion, findings of fact, findings of law, assessment of evidence, the rejection of arguments and such other similar matters. Mr. Wu cannot transmogrify the alleged errors of law, mixed fact and law, and of fact into instances of judicial misconduct by filing an application for judicial review after being unsuccessful on two levels of appeal based on those same alleged errors.

[41] The differences in forum and relief sought before the Court of Appeal for Ontario, the Supreme Court of Canada and the CJC do not save Mr. Wu's application for judicial review from being frivolous and vexatious and an abuse of process as it relitigates the facts of a proceeding that has been heard, decided, and upheld on appeal.

[42] Mr. Wu's proceeding has not the slightest chance of success in any event because the screening officer is specifically legislatively empowered pursuant to section 90 of the *Judges Act*

to dismiss a complaint filed against a federally appointed judge such as the Motions Judge. Mr. Wu's allegations that the CJC Screening Officer acted beyond his authority and his other allegation against the CJC Screening Officer are clearly unfounded.

[43] This remains so despite Mr. Wu's facile mention of discrimination pursuant to section 15 of the *Canadian Charter of Rights and Freedom* in his originating document (*Mancuso,* at para 21). Mr. Wu's allegation that he was discriminated against when his complaint against the Motions Judge was dismissed is very far indeed from being a serious one given its complete absence of particulars or supporting allegations of material fact. His allegation of discrimination could not be more bald.

VI. **Conclusion**

[44] For the reasons set out above, I conclude that Mr. Wu's application for judicial review is frivolous, vexatious and an abuse of process within the meaning of Rule 74(1)(b) and (c). Mr. Wu's application for judicial review shall therefore be removed from the Court file.

[45] In the circumstances, and considering that this Court now appears to be the third Court after the Ontario Superior Court of Justice and the Court of Appeal for Ontario to find that Mr. Wu's allegations and arguments with respect to the matters raised bear the hallmarks of frivolous and vexatious litigation, or are frivolous, vexatious and abuse of process, this proceeding shall be dismissed in its entirety pursuant to Rule 168 of the *Rules* without the ability to amend or to refile.

ORDER in T-792-25

THIS COURT ORDERS that:

1. The Applicant's Notice of Application filed on March 7, 2025, is to be removed forthwith from the Court file pursuant to Rule 74(1)(b) and (c) of the *Rules*.
2. The Applicant's proceeding is dismissed pursuant to Rule 168 of the *Rules* without leave to amend or refile.
3. The Attorney General of Canada may seek its costs of this proceeding by serving and filing written submissions on costs that do not exceed 3 pages, double-spaced, exclusive of schedules and authorities by May 16, 2025. Mr. Wu will then have until May 23, 2025, to serve and file responding submissions on costs that do not exceed 3 pages, double-spaced, exclusive of schedules and authorities.
4. No costs shall be awarded if no costs submissions are made in accordance with the terms of this Order.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-792-25
STYLE OF CAUSE:	PETER WU v. CJC SCREENING OFFICER ROBIN MACKAY ET AL
ORDER AND REASONS:	DUCHESNE, J.
DATED:	MAY 9, 2025

REQUEST IN WRITING CONSIDERED IN OTTAWA, ONTARIO PURSUANT TO RULE 74(1) OF THE *FEDERAL COURTS RULES*.

WRITTEN SUBMISSIONS BY:

Peter Wu	FOR THE APPLICANT (SELF-REPRESENTED)
Jake Norris	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT