

Federal Court



Cour fédérale

Date: 20250626

Docket: IMM-11811-25

Citation: 2025 FC 1152

Toronto, Ontario, June 26, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

MAHIR YAHYA SHARIF

Applicant

and

**MINISTER OF CITIZENSHIP AND
IMMIGRATION
AND
THE MINISTER OF PUBLIC SAFETY AND
EMERGENCY PREPAREDNESS**

Respondents

ORDER AND REASONS

[1] The Applicant seeks an Order staying his removal from Canada to Somalia, scheduled for June 30, 2025. He seeks this stay pending the determination of his application for leave and for judicial review [the ALJR] of a decision by a Senior Decision Maker at Immigration, Refugees and Citizenship Canada (IRCC), dated May 13, 2025 made pursuant to paragraph 115(2)(a) of

the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], that the Applicant constitutes a danger to the public in Canada [the Decision].

[2] The Applicant filed his stay motion on June 18, 2025. The Applicant argues that he has at least an arguable case for the judicial review of the decision and that he will suffer irreparable harm, not compensable in damages, if he is removed from Canada. He also argues that the balance of convenience lies in favour of staying the execution of his removal until the Court has determined the merits of his ALJR if leave is granted. The Respondents oppose the motion.

[3] After reading the parties' motions records and written representations, and after hearing from the parties during a virtual hearing held on June 24, 2025, I conclude that the Applicants' motion must be dismissed. The Applicant has failed to satisfy the conjunctive tripartite test for an interlocutory stay of his removal.

I. Preliminary Matters

A. ***Amending the Style of Cause***

[4] The Respondent has requested that the Court amend the style of cause in this proceeding to include the Minister of Public Safety and Emergency Preparedness as a Respondent party as he is responsible for the enforcement of the IRPA.

[5] The Court agrees. The Minister of Public Safety and Emergency Preparedness shall be added as a Respondent to this proceeding and on this Order.

B. Request for the Introduction of New Evidence at the Hearing

[6] The Applicant sought leave at the hearing to introduce a rebuttal affidavit sworn by the Lawyer-Manager at the Applicant's solicitors of record's office. The affidavit was intended to rebut or correct alleged omissions in one of the Respondent's tendered affidavits. The affidavit also attached an affidavit sworn by the Applicant as an exhibit to the affidavit that was sought to be admitted.

[7] The Respondent objected to the alleged new evidence being admitted on three grounds. First, the evidence sought to be admitted was not new and was available to the Applicant before the date of hearing. Second, the evidence presented is not rebuttal evidence at all. Third, the Applicant's affidavit that was attached to an affidavit should be given no weight.

[8] The evidence sought to be admitted was available to the Applicant before the date of the hearing and ought to have been included in his motion record at the time of filing. There was no reasonable explanation for the late production of the documents sought to be tendered. I agree with the Respondent that the evidence sought to be filed was not rebuttal evidence in nature as its content had already been addressed in the record and was, in any event, largely confirming previously tendered evidence. Finally, this Court's jurisprudence is that efforts to file an affidavit as an exhibit to another affidavit should be rejected largely because the evidence sought to be tendered would be shielded from cross-examination. If the affidavit attached as an exhibit is admitted, then it is to be given no weight (*Parshottam v Canada (Citizenship and Immigration)*, 2008 FC 51, aff'd 2008 FCA 355; *ME2 Productions, Inc v Doe #1*, 2019 FC 214 at para 97;

Rainy River First Nations v Bombay, 2022 FC 1434 at para 35; *Zaman v Canada (Minister of Citizenship and Immigration)*, 1997 CanLII 16394 (FC)).

[9] The Respondent's objections were accepted at the hearing and the request to introduce new evidence was rejected.

II. The Tripartite Conjunctive Test

[10] To be successful on this motion, the Applicant must meet the tripartite and conjunctive test for interlocutory injunctive relief set out by the Federal Court of Appeal in *Toth v Canada (Minister of Citizenship and Immigration)*, 1988 CanLII 1420 (FCA), and by the Supreme Court of Canada in *RJR-MacDonald Inc v Canada (Attorney General)*, 1994 CanLII 117 (SCC) [*RJR*] and in *R v Canadian Broadcasting Corp*, 2018 SCC 5.

[11] The tripartite and conjunctive test requires that the Applicants demonstrate:

- a) that there is a serious issue to be tried;
- b) that the Applicants would suffer irreparable harm if their motion was dismissed; and,
- c) that the balance of convenience lies in the Applicants' favour.

[12] The threshold for establishing a serious question is generally low. The existence of a "serious issue" is predicated upon a proper application for leave and judicial review being before the Court (*Oberlander v Canada (Minister of Citizenship and Immigration)*, 2003 FCA 134; *Bergman v Canada (Public Safety and Emergency Preparedness)*, 2010 FC 1129, at para 17 and

22; *Emmanuel v Canada (Public Safety and Emergency Preparedness)*, 2021 CanLII 11765, *Klauss v Canada (Citizenship and Immigration)*, 2022 CanLII 57306).

[13] Whether a serious issue is to be tried requires a preliminary assessment of the merits of the case in order for the Court to be satisfied that the case is neither frivolous nor vexatious (*RJR* at 337-338). Whether a serious issue is raised must therefore be determined by considering the allegations and grounds of review set out in the ALJR. In the absence of serious grounds to challenge an administrative decision that is subject to judicial review, seeking a stay pending judicial review amounts to no more than a free-standing request for delay. Such a request is not justified in the context of the requirement that a removal order be enforced “as soon as possible” pursuant to subsection 48(2) of the IRPA (*Ogunkoya v Canada (Citizenship and Immigration)*, 2021 FC 679 at para 6).

[14] To establish irreparable harm, the Applicant must present clear, non-speculative evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless the stay he seeks is granted. Irreparable harm is forward-looking and unavoidable (*Wasylynuk v Canada (Royal Mounted Police)*, 2020 FC 962 at para 152, citing *Janssen Inc. v Abbvie Corporation*, 2014 FCA 112 at para 24). The harm demonstrated must constitute more than a series of possibilities and may not be based on mere assumptions, speculation, or hypotheticals and contingencies (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 at para 31; *Atwal v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 427 at para 14; *Ledshumanan v Canada (Public Safety and*

Emergency Preparedness), 2021 FC 1463 at paras 54–55). My colleague Justice Gascon

summarized the issue in *Patel v Canada*, 2018 FC 882 at paras 7- 8 as follows:

7. Irreparable harm is a very strict test. In the context of stays of removal, it implies a serious likelihood of jeopardy to the applicant’s (or his or her family’s) life, security or safety. It requires clear, convincing and non-speculative evidence going beyond the inherent consequences of deportation (*Palka v Canada (Public Safety and Emergency Preparedness)*, 2008 FCA 165 [Palka] at para 12; *Selliah v Canada (Minister of Citizenship and Immigration)*, 2004 FCA 261 [Selliah] at para 13).

8. The Federal Court of Appeal has frequently insisted on the attributes and quality of the evidence needed to establish irreparable harm in the context of injunctive relief. Irreparable harm must flow from clear and non-speculative evidence (*AstraZeneca Canada Inc v Apotex Inc*, 2011 FC 505 at para 56, aff’d 2011 FCA 211; *Aventis Pharma SA v Novopharm Ltd*, 2005 FC 815 at paras 59-61, aff’d 2005 FCA 390). Simply claiming that irreparable harm is possible is not enough: “[i]t is not sufficient to demonstrate that irreparable harm is ‘likely’ to be suffered” (*United States Steel Corporation v Canada (Attorney General)*, 2010 FCA 200 [US Steel] at para 7). There must be evidence that the moving party will suffer irreparable harm if the injunction or the stay is denied (*US Steel* at para 7; *Centre Ice Ltd v National Hockey League* (1994), 1994 CanLII 19510 (FCA), 53 CPR (3d) 34 (FCA) at 52). In addition, the evidence must be more than a series of possibilities, speculations, or hypothetical or general assertions (*Gateway City Church v Canada (National Revenue)*, 2013 FCA 126 [Gateway City Church] at paras 15-16). Assumptions, hypotheticals and arguable assertions unsupported by evidence carry no weight (*Glooscap Heritage Society v Canada (National Revenue)*, 2012 FCA 255 [Glooscap] at para 31). Quite the contrary, there needs to “be evidence at a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result unless a stay is granted” (*Gateway City Church* at para 16, citing *Glooscap* at para 31).

[15] When considering the balance of convenience branch of the applicable test, the Court must determine which of the parties will face greater harm from the granting or refusal of the stay, taking into account public interest in having the IRPA enforced in an efficient, expeditious,

and fair manner (*RJR* at 342; *Ibrahima v Canada (Public Safety and Emergency Preparedness)*, 2011 FC 607 at paras 66–68). The balancing exercise can consider the strength of the underlying application for judicial review. If a serious issue that calls the removal into question is identified, then the public shares the applicant’s interest in granting a stay in order for the Court to decide the merits of the underlying application for judicial review (*Matthew v Canada (Citizenship and Immigration)*, 2022 FC 924 at para 28; *Acti v Canada (Citizenship and Immigration)*, 2022 FC 336 at para 60).

III. Background

[16] The Applicant is a 25-year-old citizen of Somalia. He was born and raised in Saudi Arabia and lived there without status before being deported to Somalia in 2011. After spending most of his life outside of Canada, he landed in 2019 with his family and granted permanent residence as a Convention refugee. He was subsequently found inadmissible for serious criminality pursuant to section 36(1)(a) of the IRPA. Given the issuance of a removal order and the Applicant’s protected person status, he was referred for an assessment pursuant to section 115(2)(a) of the IRPA.

[17] In August 2022, the Applicant was convicted of six criminal offences: sexual assault, mischief, theft under \$5,000, possession of substance, trafficking substance (fentanyl and methamphetamine), fraudulently obtaining transportation, and resisting arrest. The offenses occurred between January and September 2022. He was charged with other offences as early as April 2021, just after his arrival in Canada, but those charges were withdrawn.

[18] Of these offences, the conviction for sexual assault pursuant to section 271 of the *Criminal Code* was deemed to constitute “serious criminality” per the IRPA. While the Applicant displayed impulsivity and poor emotional management while carrying out several of the offences, he committed the sexual assault and trafficking offences with some degree of calculation.

[19] While incarcerated, the Applicant demonstrated ongoing problematic behaviour and attitudes. He minimized his involvement in criminal behaviour, denying the sexual assault conviction and blaming circumstances and drug abuse for his other offences. The Applicant was transferred to the Structured Intervention Unit in mid-2023 because he was found to pose an unmanageable risk to safety in the correctional institution.

[20] The Applicant exhibited increasing aggression and violence towards staff, limited accountability for his actions, and involvement in subculture activities including substance abuse and weapons possession. During his incarceration, he incurred 20 security incidents, 11 minor charges and 13 serious charges institutionally.

[21] The Applicant was released in August 2024. He subsequently breached his parole conditions, failing to return to his family’s home and using drugs. His release was suspended due to the absence of a viable plan and increased risk.

[22] Given the Applicant's serious criminal conduct and lack of rehabilitation, the Applicant was found in the Decision to represent a present and future danger to the Canadian public. The decision maker concluded that his presence in Canada posed an unacceptable risk to Canadians.

[23] The Applicant seeks to have the Decision judicially reviewed.

IV. Analysis

A. ***There is no Serious Issue***

[24] The ALJR was filed on May 27, 2025, and has not been amended since its initial filing. There is no evidence before the Court that the Applicant sought to amend his ALJR in any manner prior to the hearing of this motion.

[25] The Applicant's ALJR is very brief and contains boilerplate language reproducing the substance of subsection 18.1(4)(a), (b) and (c) of the *Federal Courts Act*, RSC 1985, c F-7 [the FCA] as the grounds of review without mention of any material fact whatsoever. I note, parenthetically, that the subsection 18.1(4) of the FCA is preceded by the marginal note that reads "Grounds of Review". The marginal note does not form part of the FCA and is inserted in the statute for convenience of reference only (*Interpretation Act*, RSC 1985, c I-21, s 14; (*Canada (Attorney General) v Marinos (C.A.)*, 2000 CanLII 17116 (FCA) at para 28). A review of the statutory language used in subsection 18.1(4) of the FCA shows that the provision declares that the Court may grant the relief set out subsection 18.1(3) of the FCA if it is satisfied that any of the events described in paragraphs 18.1(4)(a) to (f) of the FCA have been made out. The

events described in paragraphs 18.1(4)(a) to (f) of the FCA describe legal bases upon which the Court may exercise subsection 18.1(3) powers but does not set out that the identified events are “grounds” of review as worded.

[26] The ALJR pleads that if leave is granted, the judicial review will proceed on the grounds that the decision-maker who made the Decision: a) breached the rules of procedural fairness; b) erred in law by ignoring and misconstruing evidence; c) erred by rendering an unreasonable decision; d) acted without jurisdiction, acted beyond jurisdiction, or refused to exercise their jurisdiction; and, e) such other grounds as counsel may advise and the Court may allow.

[27] An ALJR serves the same function as a notice of application governed by rule 301 of the *Federal Courts Rules* (*Khinda v Canada (Citizenship and Immigration)*, 2022 FC 1430 at para 5) but has its content prescribed by Rule 5(1) of the *Federal Courts Citizenship, Immigration and Refugee Protection Rules*, SOR/93-22 [the FCCIRPR]. The ALJR frames the proceeding as a whole by setting out the relief sought and the grounds that support the relief being granted.

[28] Rule 5(1)(f) of the FCCIRPR requires that an ALJR set out “the grounds on which the relief is sought, including a reference to any statutory provision or Rule to be relied on”, while the regulatory language used in Rule 301(e) of the *Federal Courts Rules* requires that the application set out “a complete and concise statement of the grounds to be argued, including a reference to any statutory provision or rule to be relied upon”. The differences between the two requirements fixed by regulation are limited to the requirement of pleading “a complete and concise statement of the grounds to be argued” pursuant to Rule 301 of the *Federal Courts*

Rules; Rule 5(1)(f) of the FCCIRPR does not require a “complete and concise” pleading of grounds. Regardless of whether the applicable Rule requires that an application set out “complete and concise statement of the grounds to be argued”, or the “grounds on which the relief is sought”, it remains that “grounds” must be set out in an ALJR or in a notice of application in order to be compliant with the FCCIRPR or the *Federal Courts Rules*, as the case may be, and be respectful of the governing jurisprudence.

[29] The Federal Court of Appeal held as follows in *JP Morgan Asset Management (Canada) Inc. v Canada (National Revenue)*, 2013 FCA 250 [*JP Morgan*], with respect to the grounds that must be stated in a notice of application for judicial review:

[42] While the grounds in a notice of application for judicial review are supposed to be “concise”, they should not be bald. Applicants who have some evidence to support a ground can state the ground with some particularity. Applicants without any evidence, who are just fishing for something, cannot.

[43] Thus, for example, it is not enough to say that an administrative decision maker “abused her discretion”. The applicant must go further and say what the discretion was and how it was abused. For example, the applicant should plead that “the decision-maker fettered her discretion by blindly following the administrative policy on reconsiderations rather than considering all the circumstances, as section Y of statute X requires her to do”.

[44] The statement of grounds in a notice of application for judicial review is not a list of categories of evidence the applicant hopes to find during the evidentiary stages of the application. Before a party can state a ground, the party must have some evidence to support it.

[45] It is an abuse of process to start proceedings and make entirely unsupported allegations in the hope that something will later turn up. See generally *Merchant Law Group v. Canada Revenue Agency*, 2010 FCA 184, 321 D.L.R. (4th) 301, at paragraph 34; *AstraZeneca Canada Inc. v. Novopharm Limited*, 2010 FCA 112, 83 C.P.R. (4th) 241, at paragraph 5. Abuses of process can be

redressed in many ways, such as adverse cost awards against parties, their counsel or both: rules 401 and 404.

[30] Regardless of whether Rule 301 of the *Federal Courts Rules* applies or Rule 5(1)(f) of the FCCIRPR applies, “grounds of review” that are required to be set out in either a notice of application or an ALJR must include the legal bases and the material facts necessary to show that the Court can and should grant the relief sought (*JP Morgan* at paras 39 - 40).

[31] An ALJR that fails to allege the legal bases and material facts that support the granting of the relief sought – namely, the grounds - is an ALJR that is not compliant with Rule 5(1)(f) of the FCCIRPR because it sets out only incomplete grounds and fails to show that the relief sought can be granted. More importantly for this motion, a failure to set out the legal basis and materials that support the relief sought in the ALJR is a failure to plead a “serious issue” because the underlying application does not set out a basis upon which the relief sought may be granted.

[32] As appears from the paragraphs above, the legal bases alleged as grounds in the ALJR are not tethered to any allegation of material fact that could support granting the relief sought. Where this becomes particularly important is that a ground that is not set out in an application cannot be raised in that party’s memorandum of law absent an amendment to the originating document (*Tl’azt’en Nation v Sam*, 2013 FC 226 at paras 6-7; *Hébert Estate v Canada (Attorney General)*, 2021 FC 1076 at para 53; *DA v Canada (Attorney General)*, 2024 FC 1626 at paras 33-39; *Brown v Canada (Attorney General)*, 2024 FC 1884 at para 61). Applying the jurisprudence in this case means that the incomplete and insufficient grounds set out baldly in the ALJR cannot be augmented, developed or completed in the Applicant’s memorandum of argument on the

potential merits at some later date. They also cannot be augmented, developed or completed in written representations in support of motion for a stay. The failure to plead the ground properly in the ALJR leads to the conclusion that there is no proper application before the Court for adjudication, and, therefore, no serious issue to be considered.

[33] It was submitted at the hearing of this motion that the grounds pleaded in the ALJR are pleaded in a manner that is consistent with the practice within the immigration law bar appearing before this Court. While that submission might be accurate in that pleading legal bases for judicial review without pleading any related material fact may be widespread and may be accepted, such a practice is clearly not compliant with either the FCCIRPR or the prevailing jurisprudence. Such a practice ought not to continue if it exists.

[34] Rule 5(1)(f) of the FCCIRPR is part of a binding regulation. As was held by the Federal Court of Appeal in *Le-Vel Brands, LLC v Canada (Attorney General)*, 2023 FCA 66, at para 14, with respect to Rule 109 of the *Federal Courts Rules*, the rule is “[...] is not a practice advisory or an optional extra. It is part of a binding regulation. It is law on the books. It is to be followed”.

[35] Leaving aside the Applicant’s deficient ALJR for the moment, I turn to consider whether there is any merit to any of the alleged “grounds” argued by the Applicant in his written representations on the existence of a serious issue. There is not.

[36] The Applicant argues that there was a breach of procedural fairness in the Decision because he had been diagnosed with a serious mental illness and was not given an opportunity to participate in the proceedings.

[37] The record on this motion reflects that the Applicant suffers from mental health issues that may be significantly exacerbated by his abuse of fentanyl and other substances and that it is “safer” to conclude that he suffers from schizophrenia. He has not been diagnosed with any specific mental illness independently of any effects of substance abuse.

[38] The Applicant was represented by counsel at various times during the CBSA’s production of a danger opinion and provided submissions through legal counsel. He was provided with a copy of all materials relied upon by the CBSA and with electronic access points to electronically conveyed materials and was provided opportunities to make submissions on those materials. He was informed of the case he had to meet and provided with opportunities to respond.

[39] The Applicant also met with a CBSA Officer, an Arabic interpreter, and a Parole Officer at which time the Applicant was asked through the interpreter if he understood the danger opinion proceedings and indicated that he did. He was also advised to seek legal advice and translation assistance and was given extensions of time to provide submissions. The Applicant nevertheless chose not to respond or to participate.

[40] I find that the Applicant's arguments regarding breaches of procedural fairness are frivolous and do not constitute a serious issue. Procedural fairness was satisfied (*Suresh v Canada (Minister of Citizenship and Immigration)*, 2002 SCC 1 at paras 122-127).

[41] The argument that there was an error in the assessment that the Applicant can return to Somalia is equally frivolous. The record on this motion reflects that the Applicant's argument is made based on evidence that was not before the decision-maker at the time of the decision.

[42] Finally, the argument that the danger assessment was unreasonable also fails to have any potential merit and is frivolous. The Applicant's argument seeks to minimize the evidence that the Applicant is a moderate risk for general recidivism and for sexual recidivism, has engaged in serious criminality, breached his parole less than two months after his release, demonstrates no remorse for his actions, has acted in a premeditated and intentional manner, and takes no responsibility for his actions while arguing that the Court should reweigh the decision-maker's findings on danger. Reweighing evidence is not this Court's role on judicial review absent the exceptional circumstances such as a fundamental error in fact-finding (*Doyle v Canada (Attorney General)*, 2021 FCA 237 at para 5). No fundamental is alleged or argued. I find that the Applicant's argued ground of judicial review is frivolous.

[43] I find that the Applicant has not raised a serious issue to be determined by this Court. He does not satisfy the first part of the tripartite conjunctive test for a stay to be granted.

B. *Irreparable Harm is Not Established*

[44] The Applicant has also failed to demonstrate that he would suffer irreparable harm if this Court declines to grant his motion.

[45] The totality of the Applicant's evidence of irreparable harm is an affidavit by the Lawyer-Manager at the office of the Applicant's solicitors of record. The affidavit attaches "documents relevant to irreparable harm the Applicant will face if he is refouled to Somalia".

[46] The evidence led falls well short of reaching a convincing level of particularity that demonstrates a real probability that unavoidable irreparable harm will result to the Applicant unless a stay is granted. An article by a freelance journalist without any publication information from June 2019 with respect to Somalia's mental health emergency at that time and a letter from the Applicant's brother providing his subjective beliefs does not rise to the level of clear, convincing and non-speculative evidence required to make out irreparable harm. The CBSA notes to file that were produced also fail to establish any irreparable harm to the Applicant that is other than the usual effect of removal.

[47] The evidence led by the Respondent establishes that the Applicant understands that he is being removed to Somalia and will cooperate with his removal. The evidence also reflects that the Applicant is content to "start fresh" in some other place, whether it be in Calgary, Edmonton, or Somalia. Finally, the evidence led is that Applicant recognizes his deportation as an opportunity to break his connection with his family, which is something he wishes to do.

[48] I find that the Applicant has not satisfied the second component of the tripartite conjunctive test for a stay to be granted.

C. ***Balance of Convenience***

[49] Finally, I find that the balance of convenience weighs heavily in the Respondent's favour. The Applicant's multiple convictions and participation in serious criminality, both in and out of correctional and psychiatric establishments, establish that the public interest in the application of the enforcement provisions of the IRPA clearly outweighs the impacts of removal on the Applicant (*Salonga v Canada (MPSEP)*, 2025 CanLII 2810 (FC) at para 26; *Mohamed v Canada (MCI)*, 2012 FCA 112 at paras 34 to 38; *Tesoro v Canada (MCI)*, 2005 FCA 148 at para 47; *Sittampalam v Canada (MCI)*, 2010 FC 562 at paras 70–73).

V. Conclusion

[50] I conclude that the motion for a stay of removal must be dismissed because the Applicant has not satisfied the tripartite test for a stay of removal.

ORDER in IMM-11811-25

THIS COURT ORDERS that:

1. The Applicant's motion for a stay of removal is dismissed.
2. The Minister of Public Safety and Emergency Preparedness is added as a Respondent to this proceeding.
3. No costs are awarded on this motion.

"Benoit M. Duchesne"
Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: IMM-11811-25

STYLE OF CAUSE: MAHIR YAHYA SHARIF v. MCI

PLACE OF HEARING: VIDEOCONFERENCE

DATE OF HEARING: JUNE 24, 2025

ORDER AND REASONS: DUCHESNE, J.

DATED: JUNE 26, 2025

APPEARANCES:

Jessica Chandrashekar

FOR THE APPLICANT

David Knapp
Nicola Shahbaz

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Refugee Law Office
Hamilton, Ontario

FOR THE APPLICANT

Attorney General of Canada
Toronto, Ontario

FOR THE RESPONDENT