Federal Court  Cour fédérale

**Date: 20231221**

**Docket: T-2064-22**

**Citation: 2023 FC 1740**

**Ottawa, Ontario, December 21, 2023**

**PRESENT: The Honourable Madam Justice Rochester**

**BETWEEN:**

**KHALIQ HUSSAIN ANWAR**

**Applicant**

**and**

**NEIL NAWAZ, SOCIAL SECURITY TRIBUNAL OF CANADA APPEAL DIVISION**

**Respondents**

## ORDER AND REASONS

[1] As noted by my colleague Justice Roger Lafrenière, recent amendments to Rule 74 of the *Federal Courts Rules*, SOR/98-106 [Rules] empower the Court with new tools to manage dysfunctional or destructive conduct in litigation before our Court (*Gaskin v Canada*, 2023 FC 1542 at para 1). Rule 74(1) permits the Court, at any time, to order that a document be removed from the Court file if, among other things, the document is scandalous, frivolous, vexatious, clearly unfounded or is otherwise an abuse of the process of the Court. Rule 74(2) requires that

prior to making an order under subsection (1), the parties must be given the opportunity to make submissions.

[2] In the present matter, the moving party, Khaliq Hussain Anwar, is self-represented. His application for judicial review was dismissed for delay following a status review by Associate Judge Trent Horne on August 30, 2023. The Applicant then brought a motion to set aside Associate Justice Horne's order, under Rule 399(2)(b) of the Rules on the basis that the order was alleged to be fraudulent, invalid, unlawful, full of mistakes, in bad faith, and dishonest. Rule 399(2)(b) provides that the Court may set aside or vary an order where the order was obtained by fraud.

[3] I dismissed the Applicant's motion under Rule 399(2)(b) on October 10, 2023 (*Anwar v Nawaz*, 2023 FC 1345 [Rule 399 Order]). The Applicant's position was that the Social Security Tribunal of Canada, Appeal Division, and various members of this Court have failed to grapple with and resolve the central issue, being the unlawful torture he has been subjected to on a daily basis over the past 17 years by the Canadian Security Intelligence Service [CSIS], through the use of a directed energy weapon, radiation, microwaves, and other techniques. The Applicant had pled that Associate Judge Horne ought to have taken numerous steps including launching an investigation into, and prosecuting, the crimes committed against him by CSIS.

[4] In the Rule 399 Order, I found that the Applicant had failed to convince me, on a balance of probabilities, that Associate Judge Horne made a false representation or that his order was obtained through fraud (at paras 6-8; *Barkley v Canada*, 2018 FC 227 at para 26; *Pfizer Canada*

*Inc v Canada (Health)*, 2011 FCA 215 at paras 20-21). Furthermore, I concluded the Rule 399 Order as follows:

> "[12] As to Mr. Anwar's frustration that his alleged issues with CSIS have not been dealt with in the context of the present proceedings, by the police or by the Royal Canadian Mounted Police, I can only implore him to seek legal advice in order to better understand what his legal recourses are."

[5] Rather than file an appeal, the Applicant filed a notice of motion seeking reconsideration of the Rule 399 Order under Rule 397 on the basis that the reasons contained therein are irrational, unlawful and wrong. The notice of motion sets out in detail sixteen grounds, which the Applicant considers "clearly and concisely" address "the relevant parts of the decision, the way in which the decision is wrong, and the reasons why the decision is wrong". The grounds include that facts were omitted, lies were stated, fraud was committed, certain case law was given greater weight than other case law, the Court was covering up for the government, the Court was wrong, the Court ought to have dealt with earlier motions and the merits of the application for judicial review, the Court refused to investigate the alleged torture of the Applicant, and failed to answer the question "why [is] the Canadian government torturing me?".

[6] The Applicant equally sought to file an 849-page motion record, which was not compliant with the Rules in many respects. This record includes his application record and motion record from 2022, along with additional material he received in 2023. This record relates to the Applicant's allegations that CSIS, along with the Canadian government and the Pakistan authorities, have been harassing and intimidating him; conducting surveillance on him; causing injuries to him; and torturing him.

[7] Rule 397 of the Rules provides that a party may request that the Court reconsider the terms of an order on the grounds that the order does not accord with any reasons given for it, or that a matter that should have been dealt with has been overlooked or accidentally omitted (*Sharma v Canada (Revenue Agency)*, 2020 FCA 203 at para 3 [*Sharma*]). A motion for reconsideration under Rule 397 returns to the member of the Court who rendered the order at issue. Such a motion, however, is not meant to be an appeal in disguise, allowing a litigant to re-argue an issue a second time in the hope the Court will change its mind (*Sharma* at para 3; *Oleynik v Canada (Attorney General)*, 2023 FCA 162 at para 29 [*Oleynik*]).

[8] On October 24, 2023, I issued an order setting out the scope of Rule 397 and my concerns that the Applicant's motion for reconsideration had all the hallmarks of a disguised appeal. The order accepted the notice of motion and motion record for filing and provided both parties with the opportunity to make submissions on the issue of whether the motion should be removed from the Court file pursuant to Rule 74(1)(b) and/or (c) [Show Cause Order].

[9] Both the Applicant and the Respondent filed submissions in response to the Show Cause Order. The Applicant takes issue with the fact that the merits of his application for judicial review were never addressed in the Rule 399 Order, nor was much of his correspondence to the Court (which he terms interim applications). He submits that these issues, namely his alleged unlawful torture by CSIS through the use of a directed energy weapon and other techniques over the past 17 years, were not addressed because the Court is protecting the interests of the Canadian government.

[10] The Applicant pleads that this motion for reconsideration was brought so that the Court may assess these issues and decide his application for judicial review. The Applicant further requests that I recuse myself on the basis that I ignored evidence of the harm he has suffered and his efforts to have the Court investigate the alleged crimes committed by CSIS. The Applicant submits that the Court is obliged to respond to the "lies and falsifications raised in the motion" and start an inquiry into the alleged torture causing his disability, injuries, and symptoms. If the Court, in the Applicant's view, had taken into account "the true picture of the application" and the facts as he presented them, it would have led to a different determination of the proceedings.

[11] The Respondent highlights the numerous deficiencies with the Applicant's Rule 397 motion and the manner in which it fails to comply with the Rules. The Respondent also submits that the motion is clearly unfounded as it fails to identify any small oversights or clerical errors. Instead, it speaks to the merits of the now-dismissed judicial review and attacks the status review decision which was never appealed – none of which is, in the Respondent's view, relevant to the Rule 399 Order.

[12] The Respondent pleads that the Rule 397 motion is abusive in that it (i) seeks to relitigate issues already determined by the Court; (ii) contains rambling discourse, graphic images, repetitive and grandiose complaints, and bold assertions of unproven torture inflicted upon the Applicant; (iii) raises issues a second time, hoping the Court will change its mind; and (iv) makes serious and unsupported accusations that the Court committed fraud, the Court rendered biased decisions, and that the Respondent is deceiving the Court. The Respondent submits that the Applicant's motion materials check every box of Rule 74, which empowers the Court to

remove a document if it is non-compliant with the Rules, scandalous, frivolous, vexatious, clearly unfounded, or an abuse of process.

[13] The general rule is that once an order is made, it is final and binding and can only be set aside by way of appeal (*Mazhero v Fox*, 2014 FCA 219 at para 19). When this Court issues a formal order or judgment, this Court cannot reconsider, suspend, set aside, or vary it, save for the few narrow and limited exceptions found in Rules 397, 398, 399, and 403 of the Rules (*Canada v MacDonald*, 2021 FCA 6 at paras 14-17). The Rule 399 Order is final and binding. Having reviewed the Applicant's Rule 397 motion materials, along with his submissions regarding the application of Rule 74, I find that the narrow exception contained in Rule 397 does not mitigate the finality of the Rule 399 Order nor has the Applicant identified any errors that would fall within the scope of Rule 397, namely clerical errors or an inadvertent error.

[14] I find the motion to be an appeal in disguise and is therefore quintessentially abusive. The Applicant is improperly seeking to re-argue issues that he argued both before me and before Associate Judge Horne, hoping for a different outcome (*Sharma* at para 3; *Bell Helicopters Textron Canada Limitée v Eurocopter*, 2013 FCA 261 at para 15). His allegations that this Court made errors of fact, ignored issues, ignored evidence, lied, erred in its analysis, made omissions, was biased, failed to take steps that it ought to have taken, and was simply wrong in many respects, is subject matter for appeal to the Federal Court of Appeal – not a reconsideration motion (Oleynik at para 29).

[15] As noted above, the Rule 399 Order addressed the narrow issue of whether Associate Judge Horne's order dismissing the application for delay was obtained through fraud (Rule 399(2)(b) of the Rules). While I appreciate that the Applicant would very much like the Court to launch an investigation into CSIS' alleged activities and rule on the alleged ongoing campaign of torture and harassment in Canada and Pakistan, that was not the scope of the motion under Rule 399(2)(b) before me which gave rise to the Rule 399 Order, nor is it the scope of the present matter under Rule 74.

[16] For the foregoing reasons, the Applicant's 397 motion and any associated materials, shall be removed from the Court file pursuant to Rule 74. The Applicant has sought to relitigate Associate Judge Horne's dismissal of his application for judicial review, first, by filing his motion under Rule 399(2)(b) which gave rise to the Rule 399 Order, and now, by filing his motion under Rule 397 for reconsideration. He has had several kicks at the can, so to speak, and it is now time to bring the underlying application for judicial review to an end. Should the Applicant disagree with the present order, his recourse lies not in another motion to this Court, but rather to the Federal Court of Appeal.

[17] The Respondent does not seek the costs of the present motion. The Respondent, however, states in its submissions that should such motions and other clearly unfounded and abusive procedures continue in the future, it will seek costs. I also take this opportunity to warn the Applicant that abusive and misguided proceedings such as the present motion and the motion that gave rise to the Rule 399 Order can have cost consequences.

**ORDER in T-2064-22**

**THIS COURT ORDERS that**:

1. The Applicant's notice of motion under Rule 397 of the Rules (Document 28), along with the motion record (Documents 30 and 31), shall be removed from the Court file.

2. No costs are awarded.

"Vanessa Rochester"
Judge

**FEDERAL COURT**

**SOLICITORS OF RECORD**

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| **DOCKET:** | T-2064-22 |
| **STYLE OF CAUSE:** | KHALIQ HUSSAIN ANWAR v NEIL NAWAZ ET AL |

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO RULE 369 OF THE *FEDERAL COURTS RULES***

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| **ORDER AND REASONS:** | ROCHESTER J. |
| **DATED:** | DECEMBER 21, 2023 |

**WRITTEN REPRESENTATIONS BY:**

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| Khaliq Hussain Anwar | FOR THE APPLICANT (SELF-REPRESENTED) |
| Jordan Fine | FOR THE RESPONDENTS |

**SOLICITORS OF RECORD:**

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| ESDC Legal Services Unit<br>Gatineau, Quebec | FOR THE RESPONDENTS |