Federal Court of Appeal

Cour d'appel fédérale

Date: 20230928

Docket: A-265-22

Citation: 2023 FCA 197

2023 FCA 197 (CanLII)

CORAM: **DE MONTIGNY J.A.**
LEBLANC J.A.
GOYETTE J.A.

BETWEEN:

JOHN TURMEL

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

Heard at Toronto, Ontario, on September 26, 2023.

Judgment delivered at Toronto, Ontario, on September 28, 2023.

REASONS FOR JUDGMENT BY: LEBLANC J.A.

CONCURRED IN BY: DE MONTIGNY J.A.
GOYETTE J.A.

Federal Court of Appeal

Cour d'appel fédérale

Date: 20230928

Docket: A-265-22

Citation: 2023 FCA 197

2023 FCA 197 (CanLII)

CORAM: **DE MONTIGNY J.A.**
LEBLANC J.A.
GOYETTE J.A.

BETWEEN:

JOHN TURMEL

Appellant

and

ATTORNEY GENERAL OF CANADA

Respondent

<u>REASONS FOR JUDGMENT</u>

<u>LEBLANC, J.A.</u>

[1] This is an appeal of a decision of the Federal Court, *per* Fothergill J. (the Application Judge), made pursuant to section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act). In his decision (the Decision), the Application Judge declared the appellant to be a vexatious litigant and, as contemplated by paragraph 40(1) of the Act, prohibited the appellant from instituting new proceedings in that Court, or continuing previously instituted proceedings, except

with leave of the Court. The Application Judge also saw fit to impose on the appellant additional measures to regulate his conduct before the Federal Court, such as requiring that any application for leave the appellant may bring to institute or continue a proceeding demonstrate that all outstanding costs awards made against him in the Federal Court have been paid in full, or prohibiting the appellant from aiding or abetting others to initiate proceedings before that Court.

[2] As pointed out by the Application Judge, the concept of vexatiousness within the context of section 40 of the Act does not have a precise meaning but as this Court stated, “it is best not to be precise” (*Canada v. Olumide*, 2017 FCA 42, at para. 32 (*Olumide*)). However, there is ample jurisprudential guidance – or hallmarks – as to what this concept entails. These “hallmarks”, which come in “many shapes and sizes”, include the following:

a) being admonished by various courts for engaging in vexatious and abusive behaviour;

b) instituting frivolous proceedings (including motions, applications, actions and appeals);

c) making scandalous and unsupported allegations against opposing parties of the Court;

d) re-litigating issues which have already been decided against the vexatious litigant;

e) bringing unsuccessful appeals of interlocutory and final decisions as a matter of course;

f) ignoring court orders and court rules; and

g) refusing to pay outstanding costs awards against the vexatious litigant.

2023 FCA 197 (CanLII)

(*Olumide v. Canada*, 2016 FC 1106 at paras. 9–10, cited in *Olumide*, at para. 34)

[3] Here, the Application Judge was satisfied that the appellant has exhibited all these hallmarks (Decision at para. 38). More particularly, he noted that the appellant "has instituted numerous meritless and repetitive proceedings before [the Federal Court], the Federal Court of Appeal, the Ontario Courts, and the Supreme Court of Canada", "brought proceedings for improper purposes, frequently sought to re-litigate matters decided previously, made scandalous allegations against members of the courts and other parties, refused to follow the Federal Courts Rules, and failed to pay costs orders" (Decision at paras. 3, 5) [reference omitted].

[4] The Application Judge further noted that the appellant has instituted, since 1980, at least 67 court proceedings, that he did so on a wide range of issues (banking, elections, gaming, libel, cannabis and COVID-19), and that virtually all of them "have been dismissed as failing to disclose reasonable causes of action, as wholly unsupported by evidence, as attempts to re-litigate matters previously decided, or as otherwise frivolous and vexatious and abuses of process" (Decision at paras. 8–9).

[5] The Application Judge also pointed to the fact that since 2014, the appellant has prepared and distributed "litigation kits" comprising templates for initiating legal claims, that these kits were used by other litigants to file roughly 770 substantially identical claims challenging various aspects of Canada's medical cannabis regulatory regime, that the appellant encouraged the use of his litigation kits to "flood the courts", and that nearly all of them "have been dismissed or are in the process of being dismissed as failing to disclose reasonable causes of action, or as otherwise frivolous, vexatious or abuses of process" (Decision at paras. 25–28).

2023 FCA 197 (CanLII)

[6] Finally, it is important to underscore that the appellant has neither challenged the evidence relied on by the respondent in his application under section 40 of the Act, nor adduced any evidence of his own (Decision at para. 5).

2023 FCA 197 (CanLII)

[7] It is trite that decisions made on motions brought under section 40 of the Act are discretionary in nature (*Feeney v. Canada*, 2022 FCA 190, at para. 4 (*Feeney*); *Olumide* at para. 23). Therefore, in order to intervene in such matters, this Court must be satisfied that the Federal Court erred on a question of law or committed a palpable and overriding error on a question of fact or of mixed fact and law (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 23; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215). The palpable and overriding error standard is a highly deferential one; the Court will only interfere with a decision under appeal where an error is obvious and affected the outcome of the case (*Benhaim v. St-Germain*, 2016 SCC 48, [2016] 2 S.C.R. 352 at para. 38; *H.L. v. Canada (Attorney General)*, 2005 SCC 25, [2005] 1 S.C.R. 401 at paras. 55-56, 69–70; *Contact Lens King Inc. c. Canada*, 2022 CAF 154 at paras. 76, 84).

[8] Before this Court, both in his written submissions and at the hearing, the appellant has attempted to show that the court proceedings he has brought so far have merits and are neither vexatious nor frivolous and that it was therefore an error on the part of the Application Judge to conclude otherwise.

[9] However, this approach is fundamentally flawed. As indicated to the appellant at the hearing of this appeal, and as pointed out by the respondent in its written submissions, we are

well past the stage where the court decisions in the appellant's prior cases can be questioned. Put another way, it was not open to the Application Judge — and it is even less open to this Court— to embark in some sort of review as to whether these decisions were right or wrong. The proper course for the appellant to challenge those decisions was to appeal them, something he has done in many instances, albeit unsuccessfully.

[10] These decisions were therefore part of the factual matrix upon which the respondent's application under section 40 of the Act needed to be determined. The Application Judge considered that factual matrix in light of the jurisprudential guidelines developed in vexatious litigants' misbehaviour matters and I see no error on his part—be it on the law or on the application of the law to the facts, which, as indicated above, is only fatal in presence of a palpable and overriding error—that would justify this Court's intervention.

[11] The appellant insisted at the hearing that he had good intentions in bringing all these claims. However, this, in and of itself, is no bar to the application of section 40 of the Act if a party "litigate(s) in a way that implicates section 40's purposes" (*Olumide* at para.33; *Feeney* at para. 25). This is what the Application Judge found to be the case here, and once again, I see no basis upon which to interfere with his findings.

[12] Respecting the additional measures imposed on the appellant, the Application Judge correctly pointed out that the Federal Court has "plenary jurisdiction to impose additional requirements as may be necessary to prevent abuses of process" and that some litigants may

2023 FCA 197 (CanLII)

require different measures and restrictions, including safeguards to "discourage them from finding other ways to continue their vexatious conduct" (Decision at paras. 49–50).

[13] There is again ample evidence on record supporting the Application Judge's conclusion that additional restrictions were appropriate in the case at bar, be it the number of meritless claims advanced by the appellant, his tendency to re-litigate these matters, his failure to pay costs orders, his recruitment of others to "flood the courts" with his "litigation kits", or his derogatory statements on members of the judiciary on social media.

2023 FCA 197 (CanLII)

[14] It is useful at this point, in order to put the Decision in its proper perspective, to remind what this Court said, in *Olumide*, about what section 40 of the Act strives to achieve:

> [17] Section 40 reflects the fact that the Federal Courts are community property that exists to serve everyone, not a private resource that can commandeered in damaging ways to advance the interests of one.
>
> [18] As community property, courts allow unrestricted access by default: anyone with standing can start a proceeding. But those who misuse unrestricted access in a damaging way must be restrained. In this way, courts are no different from other community properties like public parks, libraries, community halls and museums.
>
> [19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.

[15] Finally, I note that the Application Judge declined to impose a further restriction on the appellant by extending his order, as sought by the respondent, to proceedings in this Court as he was left with some doubt whether he had that authority. Having said that, the Application Judge suggested that in the event of an appeal of the Decision, this Court "may wish to provide further

guidance on this jurisdictional question" (Decision at para. 54). As the appellant has since been declared a vexatious litigant in this Court by order dated June 15, 2023 (reported at 2023 FCA 140), I am of the view that we should forgo that invitation because this is no longer a live issue in this case.

2023 FCA 197 (CanLII)

[16] On a purely procedural standpoint, the appellant has incorrectly named the respondent in this appeal as "Her Majesty the Queen". He should have named the respondent as the Attorney General of Canada, who was the applicant in the Federal Court proceeding that led to the Decision. The style of cause in this appeal should therefore be amended accordingly.

[17] I would therefore dismiss the appeal, with costs to the respondent in a fixed amount of $750.00, disbursements included.

"René LeBlanc"
J.A.

"I agree
Yves de Montigny J.A."

"I agree
Nathalie Goyette J.A."

2023 FCA 197 (CanLII)

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-265-22

APPEAL FROM A JUDGMENT OF THE HONOURABLE MR. JUSTICE FOTHERGILL OF THE FEDERAL COURT DATED NOVEMBER 9, 2022 IN DOCKET OR FILE NO. T-962-22

STYLE OF CAUSE:	JOHN TURMEL v. ATTORNEY GENERAL OF CANADA
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	SEPTEMBER 26, 2023
REASONS FOR JUDGMENT BY:	LEBLANC J.A.
CONCURRED IN BY:	DE MONTIGNY J.A. GOYETTE J.A.
DATED:	SEPTEMBER 28, 2023

APPEARANCES:

John C. Turmel	FOR THE APPELLANT (ON HIS OWN BEHALF)
Jon Bricker Addison Leigh	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT