Federal Court Cour fédérale

Date: 20240419

Docket: T-268-17

Citation: 2024 FC 601

Estérel, Québec, April 19, 2024

PRESENT: The Honourable Madam Justice Aylen

BETWEEN:

KRISTIN ERNEST HUTTON

Plaintiff

and

RIA SAYAT, LYNN DUHAMIE also known as STEPHANIE DUHAMIE the former Canadian Charge D'Affaires for the Republic of Iraq, THE ATTORNEY GENERAL FOR CANADA, HER MAJESTY THE QUEEN, ~~ALL JANES AND JOHNS DOES UNKNOWN TO THE PLAINTIFF~~

Defendants

ORDER AND REASONS

[1] The Attorney General of Canada [AGC] has brought an application under section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [*Act*], for an order declaring Kristin Ernest Hutton to be a vexatious litigant. The AGC requests that Mr. Hutton be prohibited from instituting litigation in this Court without leave and that his current legal proceedings be quashed or, alternatively,

discontinued, together with other additional measures to regulate Mr. Hutton's conduct before this Court. The motion is supported by the Defendant, Ria Sayat.

[2] Mr. Hutton, who is a lawyer, has filed numerous claims and applications before the Federal Courts. They are all predicated on Mr. Hutton's belief that people in his life—two former romantic partners (the Defendants, Ms. Sayat and Ms. Duhamie), his father, friends, colleagues and previous employers—are agents of the Canadian "security apparatus." Mr. Hutton alleges that these people are establishing and maintaining cover stories related to intelligence work, manipulating him, obtaining information about him for the "security apparatus" and trying to recruit him into the intelligence service.

[3] Following the commencement of this action, Mr. Hutton's capacity to practice law was evaluated by the Law Society Tribunal Hearing Division [Tribunal] and Mr. Hutton was compelled to participate in a psychiatric evaluation. The forensic psychiatrist diagnosed Mr. Hutton with "a delusional disorder, persecutory type" and determined that Mr. Hutton's litigation before this Court flows directly from his delusions. No medical evidence was filed by Mr. Hutton before this Court to rebut the diagnosis of the forensic psychiatrist. The Tribunal held that Mr. Hutton was incapacitated in 2015 and has been, and remains, incapacitated since 2017. In December of 2023, Mr. Hutton's license to practice law was suspended immediately and indefinitely, until certain conditions have been met.

[4] Mr. Hutton opposes the relief sought by the AGC. In the alternative, he has indicated that he would not oppose an order declaring him to be a vexatious litigant that would require him to

obtain leave to advance any new statement of claim in this Court that concerns matters already before the Court, provided that: (a) all of this existing legal proceedings (T-268-17, T-1143-19 and T-868-21) be permitted to continue without the need for Mr. Hutton to obtain leave of the Court; and (b) he not be required to obtain leave to commence future applications under the *Access to Information Act* as related to complaints he has made against the "security apparatus" for their failure to disclose information and documentation to him.

[5] For the reasons that follow, Mr. Hutton is declared to be a vexatious litigant. The present action, together with the proceedings bearing Court File Nos. T-1143-19 and T-868-21, shall be quashed and his remaining proceeding(s) discontinued. Mr. Hutton must pay all outstanding cost awards issued by this Court and obtain leave before starting a new proceeding or resurrecting a discontinued proceeding.

I. Background

[6] Since 2017, Mr. Hutton has brought four actions (T-268-17, T-1721-17, T-2071-19 and T-2068-19), two applications (T-1143-19 and T-868-21), numerous motions as well as five related appeals. It is Mr. Hutton's conduct in these, and related matters, that has led the AGC to ask this Court to declare Mr. Hutton a vexatious litigant under section 40 of the *Act*.

[7] I have been the Case Management Judge of this action since February of 2018 and am also the Case Management Judge in T-868-21.

A. T-268-17, related motions and appeals

[8] On February 24, 2017, Mr. Hutton commenced this action which named multiple federal defendants, including the Department of National Defence [DND], the Canadian Security Intelligence Service [CSIS], the Canadian Security Establishment [CSE] and the AGC. Mr. Hutton also named two individuals, Ms. Duhamie and Ms. Sayat. Mr. Hutton alleged that Ms. Sayat and Ms. Duhamie (his former romantic partners) are, or have previously been, undisclosed intelligence agents of His Majesty the King who, in concert with the federal defendants, unlawfully surveilled him and caused him harm. In his Statement of Claim, Mr. Hutton seeks damages in the amount of $24.5 million and various orders in relation to the destruction or recovery of digital information or data.

[9] Ms. Sayat, who dated Mr. Hutton between 2011 and 2014, is employed as a Registered Nurse and denies that she was, or ever represented that she was, a servant or agent of the Federal Crown. Ms. Duhamie dated Mr. Hutton from late 2014 to early 2015. She was an employee of Global Affairs Canada but denies having ever worked for the DND, CSIS or CSE.

[10] Notwithstanding that this action was commenced in 2017, it has not yet progressed past the documentary discovery phase due to the number of motions that have been brought and the need for extensive Court and Registry involvement, including the issuance of over 60 directions, the convening of at least 10 case management conferences and the creation of 483 recorded entries to date. What follows is a high-level summary of the relevant motions that have been brought in this action and its related appeals.

(1) Motion to strike the Statement of Claim

[11] On November 3, 2017, Ms. Sayat and the AGC each filed motions to strike the Statement of Claim (and an amended version thereof) on the basis that it was scandalous, frivolous, vexatious and an abuse of the Court's process.

[12] On June 29, 2018, I granted, in part, the motion by the Defendants to strike Mr. Hutton's claims, holding that Mr. Hutton had failed to plead sufficient material facts to support numerous allegations including: (a) the claim of unlawful interception, modification, recording and destruction of personal transmissions and digital and real property in violation of Mr. Hutton's section 8 *Charter* rights against all Defendants; (b) the claims of intentional and negligent misrepresentation and related breach of Mr. Hutton's section 2 and 7 *Charter* rights vis-à-vis Ms. Sayat's representations that she had never been married and was not currently married, that she was heterosexual and that she did not have children; (c) the claim that any of the Defendants were negligent in their monitoring and/or security screening of Mr. Hutton; (d) the claim of breach of Mr. Hutton's right to life, liberty and security of the person, and for breach of Mr. Hutton's right to life, liberty and security of the person, and for breach of freedom of thought, belief, opinions and expression, including freedom of the press and other media communications pursuant to sections 2 and 7 of the *Charter* against all Defendants; (e) all claims related to the conduct of Gary Gibbs, Peter Mitchell, Chris Ritchie and Shannon Fitzpatrick; (f) all claims related to the conduct of any John and Jane Doe; (g) the claim of defamation against Ms. Sayat related to an anonymous message sent to Mr. Hutton's father; and (h) the claim of defamation against Ms. Duhamie. Mr. Hutton was ordered to file a Fresh as Amended Statement of Claim that removed the struck claims.

[13] Mr. Hutton appealed my order striking portions of his Statement of Claim (as well as the associated cost order), which appeal was dismissed [see *Hutton v. Sayat*, 2019 FC 799].

(2) Non-compliant Amended Statement of Claim

[14] On July 16, 2018, Mr. Hutton filed a further Amended Statement of Claim that did not comply with my June 29, 2018 Order, as it continued to assert numerous allegations that had been struck and improperly referred to purported documents that had been ordered struck. Mr. Hutton's failure to comply with my Order resulted in the need for submissions from the parties as to whether a further motion to strike was required. I ultimately directed that my Order stands and that the various claims asserted by Mr. Hutton remain struck as set out therein, regardless of the state of his pleadings.

(3) Mr. Hutton's *ex parte* motion seeking a show cause order

[15] On January 24, 2020, Mr. Hutton attempted to file an *ex parte* motion, returnable at the general sitting in Toronto, seeking a show cause order based on his assertion that Ms. Duhamie was in contempt of court for failing to serve an affidavit of documents in her name. Following the Court's intervention, Mr. Hutton abandoned the motion.

(4) Mr. Hutton's motion for a further and better affidavit of documents and related appeals

[16] Mr. Hutton brought a motion seeking an order, pursuant to Rule 225 of the *Federal Courts Rules*, SOR/98-106 for the Defendants to each produce a further and better affidavit of documents

among other things. Mr. Hutton sought numerous irrelevant documents and in the case of Ms. Sayat and Ms. Duhamie, the irrelevant documents were highly personal.

[17] In the case of Ms. Sayat, he sought her birth certificates, elementary and high school yearbooks, university yearbooks, photographs at university, old and new family photos with brothers and parents, recent family photos at a new condominium, photographs from her Facebook page, correspondence related to her rejection from medical school, her psychiatric regards, digital photographs with her cousin, photographs of Ms. Sayat with various individuals in relation to whom all claims had been struck, her vaccination records and her high school and university identification cards. In relation to Ms. Duhamie, Mr. Hutton sought production of her birth certificate, all yearbooks (elementary, high school and university), photographs of Ms. Duhamie with individuals against whom all claims had been struck, documentation showing her contributions to her public service pension plan, her tax records and her employment records.

[18] I dismissed Mr. Hutton's motion in its entirety and made a heightened cost award because Mr. Hutton's behaviour had increased the duration and expense of this motion, had been abusive and warranted deterrence. Specifically, I noted the following conduct:

A. Following the filing of all motion records on this motion and without warning to the Defendants or the Court, Mr. Hutton sought to: (a) amend his notice of motion to seek additional relief including a preliminary determination of a question of law; (b) amend his notice of motion to include new grounds; (c) file a supplementary motion record to address on-going disclosure issues and the question of law; and (d) bring a separate motion, returnable before the hearing of this motion, for leave

to have subpoenas issued to the individual Defendants to give evidence on this motion. The Defendants filed detailed submissions in response to these various requests. In Ms. Sayat's case, the legal fees associated solely with addressing these requests (all of which were rejected) totalled $4,500.00.

B. Mr. Hutton improperly and repeatedly attempted to add to his list of requested disclosure.

C. Mr. Hutton improperly included in his cost submissions reply submissions going to the merits of the motion.

D. Mr. Hutton improperly sought documents relating to a number of third parties when the allegations related to these third parties were struck.

E. Mr. Hutton knew, or ought to have known, that this motion was devoid of merit. At the case management conference held on October 24, 2019, I specifically advised counsel for Mr. Hutton that I had concerns with the scope of the documents sought and that, on the motion, I would require detailed submissions from Mr. Hutton in relation to the relevance of each of the documents sought. Counsel for Mr. Hutton assured me that the list of requested documents would be reduced. However, rather than being reduced, the list grew longer.

[19] Mr. Hutton appealed the dismissal of his motion. On December 22, 2020, in *Hutton v Sayat*, 2020 FC 1183, Justice Mosley dismissed his appeal. In his decision, Justice Mosley referred to the "extraordinary farrago of claims" in Mr. Hutton's underlying action, noted that the claims against

the individual Defendants constitute "a form of harassment" and stated that the claims against all Defendants have "no apparent basis in reality and are predicated on delusions":

> [1] On its face, this is an appeal of an Order of a Prothonotary dismissing the Plaintiff's Motion for Further and Better Affidavits of Documents in an action he has filed in the Federal Court. Beneath the surface, the underlying action is an extraordinary farrago of claims in which the Plaintiff purports to be the target of surveillance by Canada's security agencies, his work associates and friends including two former romantic partners. His efforts to pursue those claims against the named individual defendants are, in this Judge's view, a form of harassment.
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> [2] The claims against all of the Defendants have no apparent basis in reality and are predicated on delusions. But the courts, community property that exist to serve everyone at public expense, allow unrestricted access by default, subject to motions to strike brought by the opposing parties, which require that they incur legal costs, or a declaration by the court that the plaintiff or applicant is a vexatious litigant. Motions to strike do not prevent a litigant from filing additional actions or applications for judicial review, which demand the expenditure of further resources.
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> [7] In the underlying action, the Plaintiff alleged that Ms. Ria Sayat and Ms. Lynn Duhaime [*sic*], two of the Plaintiff's former romantic partners, as well as many other friends and colleagues, are servants or agents of the Federal Crown who pursued relationships with him for the purpose of establishing and maintaining cover stories related to intelligence work, to monitor, report upon and manipulate his activities and/or to recruit him. In another action before the Court, in Court file T-2086-19, the Plaintiff has alleged that his own father and several other former romantic partners are part of the conspiracy against him.
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> [Emphasis added.]

[20] In *obiter*, Justice Mosley made the following remarks with respect to Mr. Hutton's litigation conduct, as well as the applicability of section 40 thereto:

> [52] This is one of six actions and applications for judicial review that the Plaintiff has filed in the Federal Court since 2017. All of

> them have required the expenditure of public funds and judicial resources as well as those of the Defendants and Respondents. The Court does not lightly point to what appears to be delusional behaviour, but it has to be concerned when there is no realistic basis for the proceedings brought by the Plaintiff. This judge has fifteen years of experience in dealing with matters related to national security as well as related prior legal experience. Nothing in that experience suggests that there is any merit to the Plaintiff's claims.
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> [53] To this point, the Summary of Recorded Entries in the Federal Court Proceedings Management System for this file includes 313 entries indicating steps in the proceedings since the initial filing in 2017. The amount of time that reflects on the part of the judicial officers and court staff is difficult to estimate but it is significant, and is a cost borne by the taxpayers.
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> [54] One of the tools available to the Court for preventing the abuse of its procedures is a vexatious litigant declaration under s 40 of the *Federal Courts Act* RSC 1985, c F-7. […]
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> [61] The Court is not aware of any consideration by the Attorney General of Canada of a s 40 application in these proceedings. But the requirement that the Attorney General must consent to an application under s 40 unnecessarily constrains the ability of the Federal Courts to control their own processes.

[21] On January 18, 2021, Mr. Hutton attempted to appeal Justice Mosley's decision to the Federal Court of Appeal, but was out of time. In the context of his appeal, Mr. Hutton brought additional motions, including a motion to file new evidence. On April 27, 2021, the Federal Court of Appeal awarded solicitor and client costs, which it deemed appropriate "in light of the unmeritorious nature of this appeal" (see Court File No. A-18-21). Mr. Hutton then drew Ms. Sayat into a costs assessment with respect to the Federal Court of Appeal's Order, where the assessment officer ultimately assessed and allowed Ms. Sayat's Bill of Costs [see *Hutton v Sayat*, 2022 FCA 30 at para 43].

(5) Motions for summary judgment and related motions

[22] In 2021, the AGC and Ms. Sayat each brought a motion for summary judgment. In the course of the summary judgment motions, the AGC filed a motion to protect the identity of its affiant "Catherine," an employee of CSIS, whose affidavit was filed in support of the AGC's motion for summary judgment [Catherine Affidavit].

[23] In response, Mr. Hutton brought a motion dated May 26, 2021, relating to the Catherine Affidavit and other issues, wherein Mr. Hutton served and filed a 516-page motion record seeking, among other things, to have Catherine re-attend for cross-examination, to strike portions of the Catherine Affidavit, to strike out the AGC's Statement of Defence and for the appointment, if necessary, of an *amicus curiae* with "Top Secret or Enhanced Top Secret Clearance." The motion also challenged the constitutionality of section 18.2 of the *Canadian Security Intelligence Service Act*, RSC 1985, c C-23 [*CSIS Act*] on the basis that it permits CSIS employees to lie and tender fake evidence before the Court.

[24] On May 27, 2021, Mr. Hutton filed another motion that included requests: (i) for an order that Catherine answer questions Mr. Hutton asserted were improperly refused at her cross-examination; (ii) to appoint a security-cleared *amicus curiae* to assist this Court in relation to Mr. Hutton's constitutional challenge to section 18.2 of the *CSIS Act*; and (iii) to purportedly "correct any 'miscarriages of Justice'" that arise or might arise from directions I had issued related to the outstanding motions.

B. T-1721-17

[25] On November 9, 2017, Mr. Hutton commenced an action against Daniel Gosselin, the former Chief Administrator of the Courts Administration Service [CAS]. Mr. Hutton sought a declaration that CAS had acted "without statutory power and usurped [their] power" in relation to the motion to strike his Statement of Claim in T-268-17. Mr. Hutton took issue with the fact that, in the Defendants' notices of motion, the Defendants sought to strike his pleading pursuant to Rule 221(1)(c) and (f) of the *Federal Courts Rules* and not only Rule 221(1)(a) as had been discussed at a case management conference.

[26] On January 31, 2018, Associate Judge Kevin R. Aalto struck the action without leave to amend, holding that:

> It is patently obvious on the most cursory review of the Claim that it discloses no sustainable cause of action. In any event, any complaint which the Plaintiff had with the conduct of action T-268-17 could, should and was resolved in that action. This action is nothing short of an abuse of process and is frivolous and vexatious. It is so clearly futile that it has no chance of success [see. for example, *Ruman v HMQ* 2005 FC 389 at para. 18]. It is astonishing that a lawyer licensed to practice law in Ontario would issue such a Claim.
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> [Emphasis added.]

C. T-2071-19 and T-2086-19

[27] In 2019, Mr. Hutton commenced two actions relating to the same underlying issues and claims in T-268-17 (T-2071-19 and T-2086-19), including those which had previously been struck.

[28] In T-2071-19, Mr. Hutton once again alleged that the defendants in that action, Robert Hutton (his father), Gary W. Gibbs, Michelle Gibbs, Peter Mitchell, Charlotte Freeman-Shaw, Rega Chang, Elke Jessen, Ms. Sayat, Ms. Duhamie, Chris Ritchie, Shannon Fitzpatrick, Rhys Jenkins and Bob Scott Ryan, are, or were previously, undisclosed intelligence agents of His Majesty the King. Mr. Hutton also alleged that his rights under sections 7, 9, 12 and 15 of the *Charter* had been violated by the government's refusal to confirm his claims.

[29] In T-2068-19, Mr. Hutton sought declarations that the actions of Crown employees had infringed his rights under sections 7, 8, 9, 12 and 15 of the *Charter*, that the AGC was in breach of fiduciary and constitutional duties owed to him and that concurrently holding employment as a lawyer in Ontario and as "an active undisclosed servant or agent of the security apparatus" contravened section 71 of the Ontario *Courts of Justice Act*, RSO 1990, c C.43.

[30] On January 22, 2021, Justice Fothergill struck the statements of claim in T-2071-19 and T-2086-19 in their entirety without leave to amend. Justice Fothergill found that the new actions were "obvious and egregious attempts" to circumvent my case management orders in T-268-17, after they had been upheld on appeal [see *Hutton v Sayat*, 2019 FC 799]. Justice Fothergill therefore concluded that the statements of claim constituted an abuse of the Court's process [see *Hutton v Canada (Attorney General)*, 2021 FC 75 at para 11].

D. T-1143-19

[31] On July 15, 2019, Mr. Hutton filed a notice of application for judicial review of a decision by the former Office of the Communications Security Establishment Commissioner [OCSEC] to

dismiss a complaint made by Mr. Hutton in which he alleged that the CSE had intercepted or otherwise manipulated his electronic communications. In particular, he alleged that the CSE "modified and destroyed digital photographs and movies [of Ms. Duhamie] on [Mr. Hutton's] iPhone" and "modified the results of [Mr. Hutton's] dating applications such as Lavalife and Plenty of Fish" to force matches between Mr. Hutton and "agents of the Canadian Security Apparatus."

[32] On November 16, 2020, Mr. Hutton sought to amend the application to allege personal and institutional bias against the decision-maker. The AGC did not concede that there was any merit to these allegations but did not object to Mr. Hutton amending the application in order to advance the proceeding. Mr. Hutton also sought a further and better certified tribunal record [CTR].

[33] On September 30, 2020, Justice Fothergill granted Mr. Hutton's motion to amend the application and for a further and better CTR, but only in part. While Justice Fothergill found that additional disclosure may be warranted when there are allegations of bias or a breach of procedural fairness, he also noted that "it does not allow a person to engage in a fishing expedition in the hopes of discovering some documents to establish the claim." Therefore, Justice Fothergill rejected Mr. Hutton's request for a significant expansion of the CTR, holding as follows:

> Mr. Hutton's demand for production of copies of the 'hundreds of complaints' considered and dismissed by the OCSEC in the years preceding his own complaint is the kind of vague and overbroad request that is entirely inconsistent with the summary nature of judicial review.

E. T-771-20

[34] This was an application for judicial review commenced by Mr. Hutton in respect of a decision by the Office of the Privacy Commissioner [OPC] to dismiss his complaint under sections 7, 8, 25 and 35 of the *Privacy Act*, RSC 1985, c P-21. Mr. Hutton sought an order in the nature of *mandamus* remitting the matter to the OPC and requiring the OPC to conduct a more comprehensive investigation into the refusal of his request for disclosure of employment records of individuals he alleged to be former or current members of the "Federal Security Apparatus." Mr. Hutton discontinued the application on October 18, 2020.

F. T-868-21

[35] This is an application commenced by Mr. Hutton in which he challenges the constitutional validity and applicability of section 18.2 of the *CSIS Act* and any binding policy respecting the application or operation of this provision in relation to the subject matter of his various other actions and applications.

G. Stay of proceedings and related appeal

[36] On June 10, 2021, I directed that the parties to all ongoing proceedings involving Mr. Hutton state their positions on whether the proceedings should be stayed pursuant to paragraph 50(1)(b) of the *Act* pending: (a) the final resolution of the Law Society of Ontario [LSO]'s examination of Mr. Hutton's capacity to practice law; or (b) Mr. Hutton's appointment of legal counsel to represent him in all proceedings.

[37] On August 5, 2021, Justice Fothergill rendered a decision on these issues [see *Hutton v Canada (Attorney General)*, 221 FC 815] in which he held that:

> [5] As this Court has held previously, Mr. Hutton's efforts to pursue his claims against Ms. Sayat and Ms. Duhaime [*sic*] are a form of harassment. His claims have no apparent basis in reality, and appear to be predicated on delusions. Mr. Hutton has repeatedly, and in multiple forums, initiated and conducted proceedings in a manner that is abusive and vexatious, with evident disregard for judicial resources and those of the parties. If the current proceedings are not stayed, this will undermine the ability of the Court to control its own process and will bring the administration of justice into disrepute.

[38] Justice Fothergill ordered that Court File Nos. T-268-17, T-1143-19 and T-868-21 be stayed pursuant to paragraph 50(1)(b) of the *Act* pending: (a) the completion of the LSO's examination of Mr. Hutton's capacity to practice law and any appeals or reviews related thereto; or (b) Mr. Hutton's appointment of legal counsel to represent him in those proceedings. Justice Fothergill held that this Court could revisit the stay of proceedings following the final resolution of the LSO's examination of Mr. Hutton's capacity to practice law, but that the stay would be automatically lifted upon Mr. Hutton's appointment of counsel.

[39] On August 16, 2021, Mr. Hutton filed a Notice of Appointment of Solicitor, appointing Mr. Jack Lloyd to represent him in T-268-17, T-1143-19 and T-868-21, which had the effect of lifting the stay of proceedings in those matters. That same day, Mr. Hutton also filed a Notice of Appeal appealing Justice Fothergill's Order.

[40] On August 25, 2021, Mr. Hutton sought clarification on Justice Fothergill's Order, specifically, whether the stay of the three proceedings would automatically be restored if Mr. Hutton dismissed the solicitor appointed to act on his behalf. The following day, this Court

clarified that the effect of Justice Fothergill's Order is to stay all of Mr. Hutton's proceedings, both individually and collectively, unless and until he is represented by counsel. The parties ultimately agreed to hold Mr. Hutton's proceedings in abeyance pending his appeal of Justice Fothergill's Order.

[41] On February 1, 2023, the Federal Court of Appeal dismissed Mr. Hutton's appeal of Justice Fothergill's Order [see *Hutton v Sayat*, 2023 FCA 22]. In doing so, the Court stated that:

> [13] More importantly, the additional expenses that Mr. Hutton may have to incur if he decides to be represented have to be balanced with the overall interest of justice and the need to safeguard scarce judicial resources. Mr. Hutton's erratic behaviour and the burden he has imposed on the judicial system have already stretched its limited resources, and the Federal Court could legitimately regulate its proceedings, in keeping with the fundamental objectives of ensuring access to justice for all and "the just, most expeditious and least expensive determination of every proceeding on its merits": *Coote* at para. 12.
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> […]
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> [15] There is no doubt that Mr. Hutton has the right to be heard, and that he has availed himself of this right to its full extent since 2017. This principle of natural justice is not absolute, however, and must always be exercised with a view to maintaining the integrity of the judicial system. It certainly does not allow a litigant to flood the courts with vexatious and redundant procedures, to harass defendants, to bring futile and unmeritorious claims, and ultimately to derail the judicial system. The Federal Court can determine that Mr. Hutton's litigation conduct was sufficiently vexatious, unruly or otherwise problematic, and order a temporary stay without any medical evidence. I hasten to add that Mr. Hutton's right to be heard and to bring his case to court is not completely curtailed; the stay order is temporary, since it may be revisited once the LSO has completed its examination of Mr. Hutton's capacity to practice law, and it is partial, since he may choose to be represented if he wishes to proceed with his claims and applications without delay. In my view, the stay order strikes a carefully balanced reconciliation between Mr. Hutton's common law right to bring his case to the courts and the need to protect the integrity of the judicial system and to prevent the wasteful use of judicial resources.

[Emphasis added.]

H. T-674-24

[42] One business day after the hearing of this motion, Mr. Hutton commenced an application for judicial review of a report of the Office of the Information Commissioner of Canada arising from a complaint in respect of records allegedly held by CSIS. Mr. Hutton alleges that CSIS has unlawfully withheld and redacted certain records.

I. LSO proceedings

[43] In 2017, the LSO received information regarding Mr. Hutton's self-representation before this Court which raised concerns about his capacity to meet his obligations as a licensee [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at para 21; *Hutton v Canada (Attorney General)*, 2021 FC 815 at para 1]. The Tribunal described the grounds for conducting an investigation as follows:

> [5] In 2017, an investigation arose after the Law Society received documents and information questioning the Lawyer's capacity to practise law. The materials contained various documents which formed part of the court file in an action the Lawyer commenced in Federal Court against a former girlfriend, and others, including the Attorney General of Canada.
>
> [6] The Lawyer alleged in his action, among other things, that two women previously in his life were government security agents tasked with monitoring, screening and recruiting him as an intelligence operative. The Lawyer also alleged that members of his former law firm and a client were part of Canada's security apparatus.
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> [7] Mr. Hutton initiated a second related court action against the Chief Federal Court Administrator, which was dismissed as frivolous and vexatious and an abuse of process. In dismissing the

> matter, the Court commented that it was astonished that a licensed lawyer would commence such an action.
>
> [8] The Lawyer continues with several actions in the Federal Court, all related to his underlying contention that he has been targeted by the Canadian security apparatus utilizing techniques which included positioning an intimate partner, friends and legal colleagues as part of the plot to recruit him. His allegations include that his phone had been tampered with and photos contained on it were altered. He seeks relief for negligent representation, unlawful interception, and invasion of his privacy, amongst other things.
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> [9] In addition to the Federal Court actions, the Lawyer has lodged a complaint against his former girlfriend with the College of Nurses of Ontario, suggesting that she should be investigated for her dual capacity as a nurse and a government operative.
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> [10] The Lawyer ran in the Law Society's 2019 bencher election. In his platform statement, he wrote:
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> > As an elected Bencher I will advocate for the creation of procedural mechanisms to investigate all lawyers and law-firms to determine if they operate with a "duel-capacity" [*sic*] conflict of interest and – by way of open forum – bring this issue to public light.
>
> [See *Law Society of Ontario v Hutton*, 2021 ONLSTH 27.]

[44] On April 24, 2019, the LSO brought a motion pursuant to the *Law Society Act*, RSO 1990 c L.8 for an order requiring Mr. Hutton to be assessed by a forensic psychiatrist. In response, Mr. Hutton filed two motions: a disclosure motion and a motion to strike [see *Law Society of Ontario v Hutton*, 2021 ONLSTH 28 at para 4]. The parties agreed the three motions would be assigned to the same panel.

[45] Prior to the hearing, Mr. Hutton served a summons on counsel for the LSO. A motion to quash the summons and the disclosure motion were heard in December of 2019. The Tribunal granted the motion to quash but took the disclosure motion under reserve. Mr. Hutton also served

a summons on Ms. Sayat, along with several other witnesses (including six government officials), who he wanted to have testify at the hearing.

[46] On October 26, 2020, a hearing was held with respect to the LSO's motion pertaining to Mr. Hutton's psychiatric examination and on November 10, 2020, the Tribunal made an order compelling Mr. Hutton to attend psychiatric examination [see *Law Society of Ontario v Hutton*, 2021 ONLSTH 27 at para 4]. In its reasons, the Tribunal quashed the summonses for Ms. Sayat and the other witnesses on the basis that "allowing the witnesses to testify would ben an abuse of process and a fishing expedition" [see *Law Society of Ontario v Hutton*, 2021 ONLSTH 28 at para 38-40]. The Tribunal also dismissed Mr. Hutton's motion to strike the proceedings related to the capacity assessment [see *Law Society of Ontario v Hutton*, 2021 ONLSTH 28 at para 11]. Ms. Sayat was awarded costs in the amount of $6,500.00 in relation to the motion to quash (of which costs appear to remain unpaid), which the Tribunal stated "acknowledges that […] she is a private person swept into this proceeding as a result of [Mr. Hutton's] abuse of process" [see *Law Society of Ontario v Hutton*, 2021 ONLSTH 82 at para 22].

[47] Mr. Hutton appealed the Tribunal's decision on the motion to strike, as well as their order that he be examined by a forensic psychiatrist. Further, Mr. Hutton sought to overturn various interlocutory orders including the orders to quash the summonses of Ms. Sayat and the various government representatives. The LSO brought preliminary motions to quash Mr. Hutton's Notice of Appeal insofar as it related to the interlocutory decisions.

[48] Mr. Hutton's appeal of the order to attend a psychiatric examinations was dismissed on July 7, 2021 [see *Law Society of Ontario v Hutton*, 2021 ONLSTA 23 at paras 1-2].

[49] Mr. Hutton attended examinations by a forensic psychiatrist, Dr. Andrew Morgan, on March 14, 2022, and June 3, 2022. Based on interviews with Mr. Hutton and the information received and reviewed, Dr. Morgan diagnosed him with "delusional disorder, persecutory type, as based on the criteria sets published in the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (DSM-5)" [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at para 59]. The Tribunal described Dr. Morgan's opinion, in part, as follows:

> [60] Dr. Morgan noted the lack of corroboration of the Lawyer's claim of "confessions" to spying, and the numerous inferences that the Lawyer makes from information such as photos and texts. He observed that the Lawyer is only able to see the information as confirming his opinion and is unable to accept that there could be alternative explanations.
>
> […]
>
> [91] Dr. Morgan addressed the Lawyer's activities at the Federal Court and opined that the Lawyer is likely "from a psychiatric perspective, incapable of practising law with respect to his federal court lawsuits if the Tribunal deems that his lawsuits form a part of [his] obligations as a licensee."
>
> [92] He further opined that the Lawyer's claims at the Federal Court flow directly from his delusion. Therefore, his mental illness likely renders him incapacitated to act as a lawyer in these specific actions as he is "not meeting, from a psychiatric perspective, the standard of his professional competence in terms of his judgment and other aspects of his professional business with respect to his misuse of the Court's resources."
>
> [Emphasis added.]

[50] In 2022, Mr. Hutton filed a motion for permission to summons Ms. Sayat and her parents (among others) at the capacity hearing. He sought to summons Ms. Sayat to obtain her parents' address—information he sought (and was refused) on the motion for production [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 72 at para 5]. Further, Mr. Hutton sought to summons Ms. Sayat's parents to confirm inconsistencies in her alleged cover story [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 72 at para 13]. On May 9, 2023, the Tribunal rendered its reasons for dismissing the motion. It found that neither Ms. Sayat nor her parents had relevant or material information to offer and there was no basis for the bald assertion that Ms. Sayat is, or was, an intelligence officer [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 72 at para 19].

[51] On March 1, 2023, the Tribunal held that Mr. Hutton was incapacitated in 2015 and has been, and remains, incapacitated since 2017 [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at paras 3, 17]. The Tribunal considered the following evidence in accepting Dr. Morgan's diagnosis of Mr. Hutton:

> [12] Dr. Morgan diagnosed the Lawyer with a delusional disorder, persecutory type, as manifested so far in the limited domain of his self-representation on a number of legal proceedings in the Federal Court against individuals and the government for allegedly attempting to monitor him surreptitiously and recruit him into CSIS to work for the security apparatus.
>
> [13] As part of the Law Society's application for the s. 39 order, psychiatrist Dr. Sumeeta Chatterjee was retained to review documents and information and to provide her opinion, which she did in reports dated December 13, 2018 and October 9, 2019. These reports were included in the materials that Dr. Morgan reviewed.
>
> [14] At the request of the Lawyer's then-employer, he was examined in 2015 by Dr. Lawrie Reznek, a psychiatrist. Dr. Reznek's report, dated November 18, 2015, was also included in the materials that Dr. Morgan reviewed.

> [15] The Lawyer did not adduce any current medical or psychiatric expert evidence to rebut Dr. Morgan's report.

[52] The Tribunal found that Mr. Hutton's judgment was impaired by his delusion, that he "engaged in conduct at the Federal Court that compromised the integrity of the justice system" and that, if allowed, this conduct would bring the administration of justice into disrepute [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at para 100].

[53] In its reasons, the Tribunal referenced a particular exchange at the hearing where Mr. Hutton—after asking Dr. Morgan on cross-examination if it is true that spies generally would not admit to being spies—could not answer why, in his case, so many alleged spies had confessed to him [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at para 97]. A lawyer with sound judgment, the Tribunal noted, would have been alert to the logical conundrum of both claiming that individuals are "lying with legal impunity," while at the same time "alleging that they have confessed their secret identities to him." The Tribunal remarked that this was "a notable moment […] which illustrated [Mr. Hutton's] delusion, loss of judgment and objectivity when acting as his own advocate" [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at paras 95, 99].

[54] Moreover, the Tribunal described Mr. Hutton's "attempt to circumvent court orders that struck causes of action by commencing other actions to relaunch the same facts and issues, as he did in court files T-2071-19 and T-2086-19" as being "[p]articularly unacceptable" [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at para 101]. The Tribunal stated that the "allegations made and the procedural tactics [Mr. Hutton] employed" in the proceedings before this Court "went beyond aggressive advocacy" and held that Mr. Hutton's conduct was

"incompatible with that of a competent lawyer" [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 30 at paras 23, 41].

[55] On December 5, 2023, the Tribunal ordered that Mr. Hutton's license to practise be suspended immediately and indefinitely. The suspension is to remain in effect until Mr. Hutton can establish, following treatment from a LSO-approved psychiatrist, that he is no longer incapacitated. Any return to legal practice would then be subject to certain conditions, including that he continues to receive treatment and provides reports on treatment for five years following his return to practice [see *Law Society of Ontario v Hutton*, 2023 ONLSTH 161].

[56] On January 12, 2024, Mr. Hutton filed a Notice of Appeal with the Law Society Tribunal Appeal Division appealing the Tribunal's March 1, 2023 and December 5, 2023 orders regarding his capacity and suspension, as well as the Tribunal's May 9, 2023 reasons related to the summons.

J. College of Nurses of Ontario – Mr. Hutton's Complaint against Ms. Sayat

[57] Mr. Hutton submitted a complaint against Ms. Sayat to the College of Nurses of Ontario [CNO] based on similar allegations to those included in this action and asserted that: (a) Ms. Sayat admitted to him while they were dating and while she was a student nurse that she worked for CSIS; (b) Ms. Sayat had a placement as a student nurse in the cancer ward where she was tasked by CSIS with monitoring and reporting on the health and prognosis of the former mayor of Toronto when he was undergoing cancer treatment at the facility; and (c) there is a conflict of interest between Ms. Sayat's duties as an intelligence agent and her duties as a nurse.

[58] The CNO declined to consider the complaint on the ground that it was an abuse of process. Mr. Hutton then requested a review of this decision. The Health Professions Appeal and Review Board held that Mr. Hutton's request was frivolous, vexatious, made in bath faith, moot, or otherwise an abuse of process and therefore fell within subsection 30(3) of the *Health Professions Procedural Code*, being Schedule 2 to the *Regulated Health Professions Act, 1991*, SO 1991, c 18 [see *Hutton v Canada (Attorney General)*, 2021 FC 815 at para 30(f)].

K. Section 40 motion and events leading up to the hearing of this motion

[59] In November of 2023, I sent a direction to the parties regarding the status of Mr. Hutton's various proceedings and the proposed timetable for next steps. In response to this direction, the AGC advised of its intention to bring the within motion. In response to my direction and the AGC's proposal that the vexatious litigant motion proceed prior to any further steps in these proceedings, Mr. Hutton, through his legal counsel, sent multiple lengthy and rambling letters to the Court, each over 100 pages (including attachments), to address the simple matter of timetabling next steps in these proceedings. I ultimately determined that the proceedings would be stayed pending the determination of the vexatious litigant motion.

[60] In response to the AGC's motion, Mr. Hutton, through his counsel, filed a 91-page affidavit with 1,476 pages of exhibits. Mr. Hutton then later sought leave to file a supplemental motion record with additional evidence and submissions, absent any explanation as to why such supplemental materials were required, which request was denied.

[61] Nowhere in the extensive materials filed by Mr. Hutton in response to this motion does Mr. Hutton address the findings by the Tribunal and/or the actual diagnosis made by the forensic psychiatrist. Rather, his materials attempt to demonstrate the merit of his belief that numerous people in his life are agents of the Canadian security apparatus and provide additional evidence in support of this belief, including a fabricated four-hour long uninterrupted DJ-set by members of Florence + The Machine at the Peacock Bar in Toronto purportedly designed to lure Mr. Hutton into attendance so that the security apparatus could hack his iPhone and delete material therefrom. Further, as it relates to the capacity hearing, Mr. Hutton's evidence focuses on the forensic psychiatrist's failure to interview the Defendants or anyone within the federal government to assess the merit of his claims and the forensic psychiatrist's knowledge of how the Canadian security apparatus operates.

II. Issues

[62] This motion raises the following issues:

A. Whether the necessary consent has been obtained pursuant to section 40(2) of the *Act* to bring this motion;

B. Whether Mr. Hutton should be declared a vexatious litigant; and

C. If so, the appropriate restrictions to be imposed.

III. Analysis

[63] Subsections 40(1) and (2) of the *Act* provides as follows:

Vexatious proceeding	**Poursuites vexatoires**
40 (1) If the Federal Court of Appeal or the Federal Court is satisfied, on application, that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may order that no further proceedings be instituted by the person in that court or that a proceeding previously instituted by the person in that court not be continued, except by leave of that court.	**40 (1)** La Cour d'appel fédérale ou la Cour fédérale, selon le case, peut, si elle est convaincue par suite d'une requête qu'une personne a de façon persistante introduit des instances vexatoires devant elle ou y a agi de façon vexatoire au cours d'une instance, lui interdire d'engager d'autres instances devant elle ou de continuer devant elle une instance déjà engagée, sauf avec son autorisation.
Attorney General of Canada	**Procureur général du Canada**
(2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).	**(2)** La présentation de la requête visée au paragraphe (1) nécessite le consentement du procureur général du Canada, lequel a le droit d'être entendu à cette occasion de même que lors de toute contestation portant sur l'objet de la requête.

[64] The primary rationale supporting vexatious litigant declarations is that courts "are community property that exists to serve everyone" and "have finite resources that cannot be squandered" [see *Simon v Canada (Attorney General)*, 2019 FCA 28 at para 9 [*Simon*], citing *Canada v Olumide*, 2017 FCA 42 at paras 17-19 [*Olumide*]]. Consequently, anyone with standing can start a proceeding but those that misuse the pledge of unrestricted access in a damaging way must be restrained [see *Olumide*, *supra* at para 18].

[65] As Justice Stratas explained in *Olumide*, innocent parties, some of whom have few resources, may also find themselves on the receiving end of unmeritorious proceedings brought by a vexatious litigant. Given the costs of litigation, they too may be hurt by new proceedings and a multitude of motions [see *Olumide*, *supra* at para 21].

[66] Although the usual regulatory measures in the *Federal Courts Rules* suffice for most litigants, in the case of a select few, the nature and quality of their behaviour, the actual or likely recurrence of that behaviour in multiple proceedings and the harm they cause to other litigants and the Court make a vexatious litigant declaration necessary [see *Simon*, *supra* at para 10, citing *Olumide*, *supra* at para 24].

[67] Some vexatious litigants pursue unacceptable purposes and litigate to cause harm, while others mean no harm and believe that they are pursuing a legitimate route of recourse. The latter may nonetheless be declared vexatious if they litigate in a way that implicates section 40's purposes as they are no less detrimental to the justice system and opposing parties [see *Olumide*, *supra* at para 33; *Stukanov v Canada (Attorney General)*, 2022 FC 1421 at para 24; *Coady v Canada (Attorney General)*, 2020 FCA 154 at para 24].

[68] Vexatiousness within the context of section 40 of the *Act* does not have a precise meaning but there is ample guidance, or hallmarks, in the jurisprudence of what this concept includes [see *Olumide*, *supra* at para 32; *Turmel v Canada (Attorney General)*, 2023 FCA 197 at para 2, leave to appeal ref'd [*Turmel FCA*]]. These hallmarks come in "many shapes and sizes" and 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.
>
> [See *Turmel FCA*, *supra* at para 2, citing *Olumide v Canada*, 2016 FC 1106 at paras 9-10, cited in *Olumide*, *supra* at para 34.]

[69] In *Olumide*, the Federal Court of Appeal expressed the applicable legal test for vexatious litigant declarations as follows [see *Olumide*, *supra* at para 31]:

> Vexatiousness is a concept that draws its meaning mainly from the purposes of section 40. Where regulation of the litigant's continued access to the courts under section 40 is supported by the purposes of section 40, relief should be granted. Put another way, where continued unrestricted access of a litigant to the courts undermines the purposes of section 40, relief should be granted.

[70] The threshold question can also be expressed as follows: does the litigant's ungovernability or harmfulness to the court system and its participants justify a leave-granting process for any new proceedings [see *Simon*, *supra* at para 18].

[71] It must be kept in mind that a vexatious litigant order under section 40 of the *Federal Courts Act* does not bar the litigant's access to the courts. Rather, such an order simply regulates a litigant's access by requiring them to seek and obtain leave before starting or continuing a proceeding, as permitted by subsection 40(3). This means that an outstanding matter discontinued by a vexatious litigant order issued by the Court may be revived, provided the litigant obtains leave to do so from the Court [see *Feeney v Canada*, 2022 FCA 190 at para 26, citing *Olumide*, *supra* at para 27; *Canada (Attorney General) v Hicks*, 2022 FC 978 at para 29 [*Hicks*]].

[72] The party seeking to impose this regulatory requirement upon a litigant—in this case, the AGC—bears the burden of adducing evidence to support its request and must demonstrate, on a balance of probabilities, that Mr. Hutton is a vexatious litigant [see *Simon*, *supra* at para 20; *Canada (Attorney General) v Simon*, 2022 FC 1135 at para 31].

[73] On a vexatious litigant motion, it is not necessary for the Court to conduct an extensive assessment before invoking the power provided by section 40. Rather, the Court may summarize the most relevant facts [see *Olumide*, *supra* at para 40].

A. *The necessary consent has been obtained pursuant to section 40(2) of the Act*

[74] On a vexatious litigant motion, the consent of the AGC must be formally before the Court—that is, it must be filed [see *Simon*, *supra* at para 7]. This Court has previously held that the consent may be provided by a departmental officer who acts in an appropriate capacity, including the Assistant Deputy Attorney General and/or the Acting Assistant Deputy Attorney General [see *Figueroa v Canada (Attorney General)*, 2019 C 505 at para 17; *Hicks*, *supra* at para 23; *Lawyers' Professional Indemnity Company v Coote*, 2013 FC 643 at paras 7-10 [*Coote*] aff'd 2014 FCA 98, leave to appeal ref'd]. In this case, the AGC's supporting affidavit includes, as Exhibit A thereto, a consent to this motion executed by the Acting Assistant Deputy Attorney General.

[75] Mr. Hutton invites this Court to distinguish the aforementioned decision and, in particular, Justice Hughes' decision in *Coote* on the basis that Justice Hughes did not consider the *Department*

of Justice Act, RSC 1985, c J-2. Mr. Hutton asserts that, had it been properly considered, the consent would not be found to be valid:

> 68. There is a delegated authority granted and passed within the Department of Justice Act from the Attorney General to the Deputy Minister of Justice and thereafter to **two Associate** Deputy Ministers of Justice who shall have the rank and status of the Deputy Head of the Department but there is no apparent delegated appointment to the **Assistant** Deputy Attorney General or the **Acting Assistant** Deputy Attorney General.

[76] However, Justice Hughes' decision in *Coote* was affirmed by the Federal Court of Appeal, which held that the Assistant Deputy Attorney General is capable of giving consent on behalf of the Attorney General [see *Coote v Lawyers' Professional Indemnity Company (Lawpro)*, 2014 FCA 98 at para 11, leave to appeal ref'd]. As I am bound by the decisions of the Federal Court of Appeal, I see no basis to find that the consent provided in this matter does not meet the requirement of subsection 40(2) of the *Act.*

B. ***Mr. Hutton should be declared a vexatious litigant***

[77] I have considered the substance of Mr. Hutton's various claims, together with the manner in which he has advanced his various proceedings, all as detailed above. I agree with the findings of my colleagues in this Court and the Federal Court of Appeal that Mr. Hutton's claims against Ms. Sayat and Ms. Duhamie are predicated on delusions and have no apparent basis in reality. This has now been confirmed in the context of the Tribunal proceeding where a forensic psychiatrist diagnosed Mr. Hutton as suffering from a delusion disorder and observed that the claims he is advancing before this Court flow directly from this diagnosed condition. No credible and probative

evidence has ever been tendered by Mr. Hutton to suggest that his claims are based on anything other than his mental health condition.

[78] I also agree with the previous findings of this Court and the Federal Court of Appeal that Mr. Hutton's claims against Ms. Sayat and Ms. Duhamie, and the manner in which he has advanced those claims, amount to harassment. I agree with Ms. Sayat that Mr. Hutton has advanced humiliating and unsubstantiated allegations of sexual assault and professional misconduct against her, resulting in the need for her to participate in numerous proceedings over the last eight years to protect her reputation and privacy. Mr. Hutton has also sought to improperly pull Ms. Sayat and her family into the LSO's capacity proceedings. As noted by Justice Stratas in *Olumide*, Ms. Duhamie and Ms. Sayat, in particular, are innocent parties with limited resources who I accept have been hurt by the proceedings commenced by Mr. Hutton to date and who stand to be further hurt by new proceedings and/or the continuation of existing proceedings, absent a section 40 order.

[79] Moreover, the manner in which Mr. Hutton has advanced his claims, in addition to those claims asserted against Ms. Sayat and Ms. Duhamie, has been both abusive and vexatious. In that regard, Mr. Hutton: (a) failed to amend his Statement of Claim as required by my Order dated June 29, 2018, and continued to assert claims that had been struck; (b) attempted to circumvent my Order dated June 29, 2018, by bringing new claims in T-2071-19 and T-2086-19; (c) brought a motion for a further and better affidavit of documents in T-268-17, seeking productions in relation to struck issues and entirely irrelevant and invasive documents and then improperly attempted to amend and expand the motion; (d) has attempted to bring *ex parte* and other motions contrary to the requirement to first address any contemplated motions with the Case Management Judge;

(e) brought an abusive and vexatious action against the head of CAS; (f) unsuccessfully appeals decisions as a matter of course, even where prohibited by the *Rules* (such as in the case of his appeal of Justice Mosley's Order, which appeal was brought out of time); (g) has filed excessive and rambling letters with extensive attachments to address simple scheduling issues, imposing an unnecessary burden on the Court and the parties involved; and (h) has not pursued his litigation in a timely manner (such as moving forward with Ms. Sayat's cross-examination on the summary judgment motion), instead choosing to bring additional vexatious motions against the AGC.

[80] This Court has attempted to regulate Mr. Hutton's behaviour by requiring that he be represented by counsel. However, this measure has done nothing to curb his vexatious conduct as it is apparent that Mr. Hutton is directing this litigation and preparing materials through the proxy of his counsel. He continues, even on this motion, to conduct himself in a vexatious manner (such as by advancing claims that have been struck) thereby demonstrating that, despite the efforts taken by the Court to date, he remains "ungovernable." I find that having Mr. Lloyd involved has had no discernable regulating effect on Mr. Hutton so as to alleviate the need for a section 40 order.

[81] I am sympathetic to the fact that Mr. Hutton's litigation is driven by a serious mental health condition and that he truly believes that he is pursuing a legitimate route of recourse. However, the need for a section 40 order in this case is driven by the consequences of his behaviour, not by his intention. As noted above, his litigation has harmed and continues to harm the individual Defendants and has placed an undue burden on all Defendants and this Court. There is no evidence before the Court to suggest that Mr. Hutton intends to curb his litigation conduct in response to the concerns raised by the parties. To the contrary, he has expressed an intention to continue with all

of his existing proceedings and to commence a number of other proceedings (one of which he commenced immediately after the hearing of this motion), all of which appear to be grounded in his delusion.

[82] In all of the circumstances, I am satisfied that Mr. Hutton's ungovernability and harmfulness to the Court system and its participants justifies the issuance of a section 40 order.

C. *The appropriate restrictions*

[83] It is open to this Court to make different types of vexatious litigant orders. However, care must be taken to craft the order in a way that preserves the vexatious litigant's legitimate right to access this Court while protecting, as much as possible, the Court and the litigants before it [see *Canada (Attorney General) v Fabrikant*, 2019 FCA 198 at para 44 [*Fabrikant*]]. As the Federal Court of Appeal held in *Fabrikant*, this Court has plenary jurisdiction to impose additional requirements on vexatious litigants as may be necessary to prevent abuses of process [see *Fabrikant, supra* at para 2]. A vexatious litigant order should try to do the following [see *Fabrikant*, *supra* at para 45]:

> • Bar vexatious litigants from litigating themselves, litigating through proxies, and assisting others with their litigation.
>
> • Rule on the issue whether the vexatious litigant's pending cases should be discontinued; if so, describe the manner in which they may be resurrected and continued.
>
> • Prevent the Registry from spending time on unnecessary communications and worthless filings.
>
> • Permit access to the Court by leave, and only in the narrow circumstances permitted by law where access is necessary and the respondent has respected the procedural rules and previous court

> orders; in such cases, ensure that interested persons have the opportunity to make submissions.
>
> • Empower the Registry to take quick and administratively simple steps to protect itself, the Court and other litigants from vexatious behavior.
>
> • Preserve the Court's powers to act further, when necessary, to adjust the vexatious litigant order, but only in accordance with procedural fairness.
>
> • Ensure that other judgments, orders and directions, to the extent not inconsistent with the vexatious litigant order, remain in effect and can be enforced.

[84] Quite apart from the power to discontinue proceedings under section 40, the Court can quash proceedings at any time if they are doomed to fail owing to a fatal flaw or the absence of any merit [see *Bernard v Canada (Professional Institute of the Public Service)*, 2019 FCA 236 at para 10 [*Bernard*]].

[85] Thus, while the Court has the power to order that a vexatious litigant's existing proceeding be discontinued, the Court may go further and order that the application be quashed under the Court's plenary power if the court is of the view that the proceeding is doomed to fail [see *Bernard*, *supra* at para 13]. Put differently, no point is served by discontinuing a proceeding and leaving open the prospect of resurrection at a later date, if the Court is already of the view that the vexatious litigant would not be successful on any such motion because the proceeding is doomed to fail.

[86] The AGC and Ms. Sayat request that the Court quash T-268-17, T-1143-19 and T-868-21 on the basis that these proceedings are doomed to fail. I agree. I am satisfied, for the reasons noted above, that both T-268-17 and T-1143-19 have no merit and are doomed to fail. In relation to T-

868-21, Mr. Hutton's standing to challenge the constitutionality of section 18.2 of the *CSIS Act* is predicated on the provision's potential impact on his rights in T-268-17. With T-268-17 being quashed, Mr. Hutton lacks standing to challenge section 18.2 and thus the proceeding is also doomed to fail. I find that the Defendants/Respondents in T-268-17, T-1143-19 and T-868-21 are entitled to a clear and definitive conclusion to the litigation. Accordingly, the proceedings shall be quashed.

[87] With respect to T-624-24, I did not receive any submissions from the parties as to the restriction to be granted in relation to that proceeding as it was only commenced after this motion was heard. Given that I do not have any insight into the merits of the proceeding, I will order that T-624-24 be discontinued, rather than quashed.

[88] My understanding is that Mr. Hutton has presently satisfied all outstanding costs awards made in relation to the proceedings before this Court, with some doubt existing as to the status of outstanding cost awards related to the LSO proceedings. Given that a cost award will be made on this motion and there remains the prospect of further cost awards arising from the quashing of this action, T-1143-19 and T-868-21, I am satisfied that it is appropriate to order that Mr. Hutton be prohibited from seeking leave to commence any new proceedings or to resurrect any proceedings until all outstanding cost awards arising from this Court have been paid in full [see *Canada v Zbarsky*, 2023 FC 161 at para 29; *Canada (Attorney General) v Turmel*, 2022 FC 1526 at para 51, aff'd *Turmel, supra*, leave to appeal ref'd [*Turmel FC*]; *Potvin v Rooke*, 2019 FCA 285 at para 8].

[89] The AGC has requested that the restrictions placed on Mr. Hutton apply equally to new proceedings in the Federal Court of Appeal. There is a lack of clarity in the case law as to whether this Court has jurisdiction to impose restrictions on a vexatious litigant's ability to institute new proceedings in the Federal Court of Appeal [see *Turmel FC*, *supra* at paras 52-54; *Stukanov v Canada (Attorney General)*, 2022 FC 1421 at para 2; *Coote v Canada (Human Rights Commission)*, 2021 FCA 150 at para 3, citing *Coote*, *supra*]. As such, I decline to impose any restrictions on Mr. Hutton's ability to commence new proceedings in the Federal Court of Appeal.

IV. Costs

[90] I see no reason to depart from the general principle that the successful party should be entitled to their costs. Accordingly, as the moving party, the AGC shall be entitled to recover their costs of this motion. In terms of quantum, the AGC seeks costs of the motion fixed in the amount of $2,305.50, which aligns with Column III of Tariff B of the *Federal Courts Rules*. I find this amount to be reasonable and I would note that it is less than the amount sought by Mr. Hutton had he been successful in resisting the motion. Accordingly, Mr. Hutton shall pay to the AGC their costs of this motion in the amount of $2,305.50. Ms. Sayat has not sought costs of this motion.

[91] All parties are in agreement that further cost submissions should be provided to address both entitlement and quantum of any cost award arising from the quashing and/or discontinuance of Mr. Hutton's various proceedings. Accordingly, my Order shall include a schedule for the deliver of cost submissions in letter format (not exceeding five pages in length), together with a

bill of costs, as well as for the delivery of responding cost submissions. I will remain seized of all cost determinations related to this Order.

THIS COURT ORDERS that:

1. The Plaintiff, Kristin Ernest Hutton, is declared a vexatious litigant in this Court pursuant to section 40 of the *Federal Courts Act* and cannot: (a) start any matter in this Court, whether acting for himself or having his interests represented by another individual in this Court, except by obtaining leave of this Court; and/or (b) assist or represent others in any matter in this Court.
2. This action is hereby quashed.
3. The applications bearing Court File Nos. T-1143-19 and T-868-21 are hereby quashed.
4. All other matters of any sort instituted by the Plaintiff in this Court and currently before this Court (including Court File No. T-674-24) are discontinued and the affected court file(s) shall be closed. The matters discontinued under this paragraph shall not be resurrected unless a motion for leave from this Court under section 40 of the *Federal Courts Act* is granted and any additional requirements imposed by law for resurrecting discontinued cases are met. Where a discontinued proceeding is resurrected, a new court file shall be opened. The Registry shall file a copy of this Order in all affected court files and shall deliver a copy of same to all parties in those files.
5. On any motion for an order requesting leave from this Court to start a proceeding or resurrect a discontinued proceeding, the motion record in support of the motion must: (a) fully comply with this Order, any order or direction of this Court, any legislation (including the *Federal Courts Act* and *Federal Courts Rules*) and any filing requirements; (b) bear a style of cause containing the Plaintiff's name rather than

initials, an alternative name structure, or pseudonym; (c) contain a compliant affidavit fully disclosing (i) the facts and circumstances surrounding the proposed proceeding or discontinued proceeding in order to demonstrate that it is not an abuse of process and that there are reasonable grounds for it and (ii) that all outstanding cost awards against the Plaintiff in this Court have been paid in full; (d) contain compliant written representations; and (e) contain a copy of this Order and any other orders amending it. Any such motion shall be determined in writing.

6. In granting leave to the Plaintiff to start or resurrect a discontinued proceeding, the Court may attach such terms as are appropriate including the posting of security for costs.

7. The Plaintiff shall forthwith pay to the AGC costs of this motion, fixed in the all-inclusive, lump sum amount of $2,305.50.

8. In relation to T-268-17, the AGC and Ms. Sayat shall serve and file written cost submissions in letter format (maximum five pages in length), together with a bill of costs, in relation to the costs of the underlying proceeding by no later than 14 days from the date of this Order. Mr. Hutton may file responding cost submissions in letter format (maximum five pages in length) to each of the AGC's and Ms. Sayat's cost submissions within 21 days of the date of this Order.

9. In relation to all other proceedings, the Respondent(s) shall serve and file written cost submissions in letter format (maximum five pages in length), together with a bill of costs, in relation to the costs of the underlying proceeding by no later than 14 days from the date of this Order. Mr. Hutton may file responding cost submissions in letter format (maximum five pages in length) within 21 days of the date of this Order.

"Mandy Aylen"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-268-17
STYLE OF CAUSE:	KRISTIN ERNEST HUTTON v RIA SAYAT
PLACE OF HEARING:	OTTAWA, ONTARIO
DATE OF HEARING:	MARCH 28, 2024
REASONS FOR JUDGMENT AND JUDGMENT:	AYLEN J.
DATED:	APRIL 19, 2024

APPEARANCES:

Jack Lloyd	FOR THE PLAINTIFF
Natai Shelsen James Stuckey	FOR THE DEFENDANTS

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