

Federal Court



Cour fédérale

Date: 20170410

Docket: T-1532-15

Citation: 2017 FC 355

Ottawa, Ontario, April 10, 2017

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

VOLODYMYR HRABOVSKYY

Applicant

and

HER MAJESTY THE QUEEN

Respondent

REASONS AND ORDER

I. Nature of the matter

[1] This is a motion for an order under section 40 of the *Federal Courts Act*, RSC 1985, c F-7, to have the applicant, Volodymyr Hrabovskyy, declared a vexatious litigant, preventing him from filing any new proceeding before the Federal Courts without leave.

[2] The respondent also asks that the Court exercise its discretion under subsection 221(1) of the *Federal Courts Rules*, SOR/98-106, [the Rules] and its inherent powers to dismiss the proceedings already instituted by the applicant as they constitute vexatious proceedings and abuses of process.

[3] The underlying proceeding is an application for judicial review of a decision from what is now Global Affairs Canada not to institute proceedings in front of the International Court of Justice [ICJ] against Norway and Germany on behalf of the applicant.

II. Facts

[4] This is a summary of the proceedings in this file and other proceedings instituted by the applicant. As the internal Court system shows 140 entries for this file alone, this summary does not intend to be exhaustive.

A. *T-1532-15*

[5] The applicant filed his application for judicial review in the Federal Court of Appeal, on August 6, 2015. Justice Pelletier transferred the matter to this Court on September 9, 2015.

[6] On October 26, 2015, Prothonotary Morneau issued an order denying the applicant's motion because "...the letter of the Applicant dated October 19, 2015, lacks clarity and does not contain in clear and precise terms the justification for the remedies requested".

[7] On October 30, 2015, the applicant attempted to file documents without first serving the respondent. This prompted Prothonotary Morneau to issue a direction that the Registry was not to accept for filing any document that had not been duly served on the respondent.

[8] On November 9, 2015, the Department of Foreign Affairs, Trade and Development, in response to the applicant's request for documents in possession of a tribunal under section 317 of the Rules, filed a certificate stating that the documents were not in their possession when the decision was made.

[9] On November 10, 2015, other documents were refused for filing by Prothonotary Morneau. The respondent had communicated with the Registry and found that some of the documents that had been served on her were not the same as those that were filed with the Court the previous day.

[10] The Prothonotary also refused other documents on November 12, 2015 but changed the status of his November 10, 2015 direction to an order to allow the applicant to appeal it.

[11] On November 16, 2015, the applicant appealed Prothonotary Morneau's order and asked for him to be replaced as case management judge by more "competent personnel familiar with international law".

[12] On December 10, 2015, Justice LeBlanc refused the applicant's record of reply in the abovementioned appeal for filing "as it contains a notice of motion to strike out part of the

Respondent's response to the Applicant's appeal of the impugned order, an affidavit in support and written submissions respecting said motion to strike, all of which are not permitted by the *Federal Court Rules*".

[13] On December 21, 2015, Justice Mactavish dismissed the applicant's appeal of the Prothonotary's order and ordered that the matter continue as a specially managed proceeding.

[14] On December 29, 2015, the applicant asked for reconsideration of Justice Mactavish's order. This motion was dismissed on February 1, 2016. The applicant appealed this decision to the Federal Court of Appeal on February 9, 2016, in file A-53-16.

[15] On May 20, 2016, the applicant filed a letter titled "Request for Previewed Services", requesting financial assistance to proceed with legal matters in Norway. On June 1, 2016, Prothonotary Morneau refused this letter for filing, along with the applicant's letter titled "Request for Direction" and his new Notice of Application. With regard to the letters, the Prothonotary held that they "will not be considered by this Court since they contain numerous requests that, even if this Court had jurisdiction upon them, those requests cannot be allowed by way of letters". As for the new Notice of Application, "it cannot also be filed since there is already a notice of application in said file".

[16] The applicant filed another motion on June 3, 2016, appealing the Prothonotary's June 1st order.

[17] On June 6, 2016, the applicant attempted to file further letters; however, these were not accepted for filing for reasons similar to those pertaining to the previous letters.

[18] On June 10, 2016, the applicant filed a motion for, inter alia, “Exceptional Remedies against the Crown for Criminal and Civil Liabilities of the Judicial Officer and Employees of the Registry of the Court”, in which he asked for the following:

1. Request for Specially Managed Proceeding in the Lawsuit-3 (misplacement into the lawsuit-1-T-1532-15), *FCR* Rule 384
2. Request for the Procedure with Exceptional Remedies against the Crown due to Criminal and Civil Liabilities of the Judicial Officer-the Prothonotary, *FCR* Rule 1.1(1) with *United Nations Convention against Corruption*, Articles 19 and 26(4) and the *Criminal Code of Canada*
3. Request for the Transfer of the Lawsuit-3 (misplacement into the lawsuit-1-T-1532-15) to the Criminal Division for the Purpose of Trial of the Judicial Officer - the Prothonotary - with the Criminal Offences, *FCR* Rule 49, with *United Nations Convention against Corruption*, Articles: 11(1), 19, 26(3)...
4. Request to Treat the lawsuit-3 (an Application) as an Action-the Claim against the Crown-for Incompetence of the Prothonotary and employees of the Registry of the Court, *FCR* Rule 61(4) and *Federal Court Act* Section 18.4(2)
5. Compensatory Damages - 7.53 billions CAD - for Inflicted Damages by the Incompetent Judicial Officer of the Federal Court (of Appeal) of Canada, *Vienna Convention on the Law of Treaties*, Article 48(2)
6. Transfer of Duplicates without Further Delay to Norway, Barcelona Traction judgment (International Court of Justice), p. 20, section-10
7. Appeal of the Prothonotary’s Order for 08.06.2016, *FCR* Rule 51(1)
8. Release Certain Documents in the Possession of the Tribunal, *FCR* 317(1)

[19] On June 14, 2016 the applicant filed another motion for the purpose of recovering previous extrajudicial and judicial expenses, and other reliefs.

[20] On June 29, 2016, Justice St-Louis, now the case management judge, convened the parties for a short hearing. She stated:

The Court notes that the Applicant has filed a number of motions and requests which are either difficult to understand and/or particularly difficult to link to the afore-mentioned Application for judicial review. The Court further notes that the Respondent unfortunately chose not to respond to said motions and requests.

Given that the judicial review process is destined to be speedy and expedited, and that this objective seems all but lost in this case at the present, the Court conveys the parties for a short hearing. The objective will be for the Court to obtain information and precision on the goals sought by the Applicant through his motions and requests, and to determine the direction that must be imposed to the proceedings, so that the Court can subsequently decide on all the pending motions and requests.

[21] Following the case management conference held on July 21, 2016, Justice St-Louis issued an order dismissing all the applicant's past motions and suspending these proceedings for a period of 90 days to give the respondent time to consider the option of filing a section 40 motion. On October 21, 2016, she extended that stay until January 16, 2017.

B. *A-53-16*

[22] This file concerns the appeal of Justice Mactavish's order and contains 110 entries within the internal Court system.

[23] The applicant filed his notice of appeal on February 9, 2016.

[24] On February 22, 2016, Justice de Montigny refused the applicant's motion record for filing.

[25] Justice Stratas then refused the applicant's appeal book for filing on April 19, 2016, because it did not comply with the Rules and was premature, as its contents had to be agreed upon with the respondent. On the same day, he also dismissed the applicant's letter and motion filed on March 2nd.

[26] The applicant filed a motion, on April 29, 2016, for reconsideration of Justice Stratas' order of April 19. This motion was dismissed by Justice de Montigny, on May 17, 2016.

[27] On May 20, 2016, the applicant filed a letter titled "Request for Previewed Services" and a "Request for Direction". Both were refused for filing by Justice Gleason "since they contain numerous requests that, even if the Court had jurisdiction over them, cannot be made by way of letter".

[28] On June 14, 2016, the applicant filed a motion to recover previous extrajudicial and judicial expenses in relation to two lawsuits in Norway and one in Germany and for derived expenses in relation to those three lawsuits in Belgium, Canada, Israel, Germany, France and Norway. This motion record was refused for filing by Justice Stratas on July 6, 2016, who ordered that the motion be dismissed.

[29] The applicant asked for the reconsideration of this order and this direction on July 18, 2016. The motions were dismissed by Justice Stratas, on August 17, 2016.

[30] On July 25, the applicant filed a motion seeking that the proceedings be transferred to the Criminal and Penal Division of the Court of Québec and other relief. This motion was dismissed by Justice Stratas, on August 17, 2016.

[31] On September 19, 2016, Justice Stratas ordered the applicant to file an adequate appeal book within 30 days. On September 29, 2016, the applicant filed a motion for leave to appeal to the Supreme Court of Canada which was dismissed by Justice Boivin on October 28, 2016.

[32] On November 4, 2016, the applicant filed a motion for leave to file his appeal book. This motion was dismissed by Justice Rennie on November 30, 2016. On the same day, he issued a notice of status review to the parties.

[33] On March 24, 2017, the Court dismissed the case as the applicant's submissions had been "completely non-responsive to the Notice of Status Review". Justice Gauthier held that "this entire proceeding should likewise be dismissed as the appellant has not replied to the Notice of Status Review and has accordingly delayed in his pursuit of this proceeding and provided no timetable for completion of the steps necessary to advance the proceeding in an expeditious fashion".

C. *T-1351-16*

[34] On July 15, 2016, after Justice St-Louis had stayed the proceedings in T-1532-15, the applicant filed a statement of claim naming Her Majesty the Queen, the Department of Justice, the Department of Foreign Affairs, Trade and Development, the Ministry of Justice of Québec, the Ministry of International Relations of Québec and Prothonotary Morneau as defendants (although Prothonotary Morneau is not listed in the style of cause). Among other things, the applicant sought 7.53 billion in damages from Prothonotary Morneau and “the Federal Crown”. Justice Roy stayed those proceedings on August 16, 2016. He stated: “Not only would these allegations appear to constitute a collateral attack on the judgment and orders of the Court in that proceeding, but they also include inflammatory allegations of improper behaviour against the Court, its judicial officers and staff, and others. These traits are often indicative of vexatious litigation”.

[35] A joint notice of discontinuance was filed, on November 10, 2016.

D. *T-1393-16, T-1394-16 and T-1396-16*

[36] On August 19, 2016, the applicant filed three more actions naming Her Majesty the Queen, Global Affairs Canada and the Department of Justice as defendants, along with the Ministry of Justice of Québec and the Ministry of International Relations of Québec in T-1393-16. All three were stayed by Prothonotary Morneau on August 19, 2016. He stated: “These actions are in indirect defiance of the orders of this Court dated July 25, 2016, and August 16,

2016, constitute a collateral attack on said orders, and display even more openly traits of vexatious litigation”.

[37] A joint notice of discontinuance was filed, on November 10, 2016.

E. *16-A-27*

[38] On August 22, 2016, the applicant filed a motion requesting to file a new notice of appeal and an extension of time to do so.

[39] On September 20, 2016, Justice Rennie dismissed the motion, stating that “Rule 337(d) requires that a Notice of Appeal contain a ‘complete and concise statement of the grounds to be argued’. The Notice of Appeal is prolix, and contains lengthy argument and evidentiary references”.

[40] On September 29, 2016, the applicant filed a motion requesting leave to appeal to the Supreme Court. This motion was dismissed by Justice Boivin, on October 28, 2016.

F. *Supreme Court of Canada proceedings, files 37282 and 37283*

[41] On November 8, 2016, the applicant sought leave to appeal to the Supreme Court the result in both files A-53-16 and 16-A-27.

[42] In 37282, the applicant stated that the appeal dealt with “applicability of the type of law within Canadian internal courts in relation to the diplomatic protection-internal law of Canada versus international treaties” and was titled “Denial of Justice in Canada”.

[43] In 37283, the appeal dealt with denial of justice, diplomatic protection, representation by Canada at the ICJ, treaty obligations and “Canada acted on **False and Forged** Documents emanated from Foreign States (Norway and Germany) Considering (sic) to be Genuine” (emphasis in original).

[44] Both files, and his multiple informal requests, were dismissed by the Supreme Court at the leave stage, on March 9, 2017.

III. Issues

- (1) Should the Court grant an order pursuant to subsection 40(1) of the *Federal Courts Act* against the applicant?

IV. Analysis

[45] The test to determine whether a party is a vexatious litigant was set out in *Wilson v Revenue Canada and Her Majesty the Queen*, 2006 FC 1535:

[29] For a section 40 Order to be issued I must be satisfied that Wilson has persistently brought vexatious proceedings in this Court or has conducted this matter and its related proceedings in a vexatious manner. I have concluded that this is an appropriate case for making such an Order because Wilson’s litigation conduct has been persistently vexatious and repeatedly found to be an abuse of the Court process.

[30] The authorities have interpreted “vexatious” as being broadly synonymous with the concept of abuse of process: see *Foy v. Foy (No. 2)* (1979), 102 D.L.R. (3d) 342 (Ont. C.A.). It is, therefore, not surprising that one of the notable characteristics of a vexatious litigant is the propensity to relitigate matters that have already been determined against him: see *Vojic v. Canada (Attorney General)*, [1992] F.C.J. No. 902 (Fed. T.D.).

[31] Other indicia of vexatious behaviour include the initiation of frivolous actions or motions, the making of unsubstantiated allegations of impropriety against the opposite party, legal counsel or the Court, the refusal or failure to abide by rules or orders of the Court, the use of scandalous language in pleadings or before the Court, the failure or refusal to pay costs in earlier proceedings and the failure to pursue the litigation on a timely basis: see *Vojic*, above; *Canada v. Warriner* (1993), 70 F.T.R. 8, [1993] F.C.J. No. 1007 (Fed. T.D.); *R. v. Olympia Interiors Ltd.*, [2001] F.C.J. No. 1224, 2001 FCT 859 (Fed. T.D.); *Mascan Corp. v. French* (1988), 49 D.L.R. (4th) 434, 64 O.R. (2d) 1 (Ont. C.A.); *Foy*, above; *Canada Post Corp. v. Varma* (2000), 192 F.T.R. 278, [2000] F.C.J. No. 851 (Fed. T.D.); and *Nelson v. Canada (Customs & Revenue Agency)*, [2002] F.C.J. No. 97, 2002 FCT 77 (Fed. T.D.).

[46] In *Holmes v Canada (Attorney General)*, 2016 FC 918 at para 12, the Court held that not all indicia must be met in order to find someone a vexatious litigant. Bad faith is not required for an order under s. 40(1) (*Lavigne v Pare*, 2015 FC 631 at para 14, aff’d 2016 FCA 153).

[47] I am satisfied that the applicant meets the test to be declared a vexatious litigant for the following reasons.

(1) The Initiation of Frivolous Proceedings

[48] It is quite obvious that the applicant’s motions were frivolous and were therefore dismissed by the Courts. Indeed, judges of this Court have commented on the frivolous or vexatious nature of the instituted proceedings in various occasions. Justice Roy, in his order

dated August 16, 2016, in T-1351-16, found that there were indications of vexatious proceedings in the applicant's motion. A similar finding was made by Prothonotary Morneau on August 19, 2016.

[49] Many of the applicant's motions were dismissed as they were filed by way of letters which did not allow the Court to grant the requested remedies, assuming the Court even had jurisdiction to grant those remedies. The applicant does not appear to have learned his lesson as he again filed a letter along with his responding record for this motion, requesting various reliefs including postponement of the hearing of this motion and striking the respondent's motion.

[50] The applicant also requested reliefs that were beyond the Court's jurisdiction, such as transferring the cases to the Criminal Division of the Court of Québec.

[51] Even in this motion, the applicant's arguments are mostly devoid of merit. He does refer to some legal concepts like jurisdiction and transaction but shows a lack of understanding of their meaning and application.

[52] Furthermore, the applicant's underlying application for judicial review is also frivolous and based on scandalous allegations against foreign governments. He requests relief that is outside this Court's jurisdiction. As such, the application for judicial review is to be dismissed.

- (2) The Making of Unsubstantiated Allegations of Impropriety against the Opposite Party, Legal Counsel or the Court

[53] The applicant made such allegations against Prothonotary Morneau, the Registry staff, and respondent's counsel. He alleged that the respondent had used fraud and intimidation and had made false representations. He also accused the respondent's counsel of forgery, perjury, obstruction of justice, breach of trust and bribery. He accused Global Affairs Canada of criminal offences and of obstruction of justice. He characterized communication between the respondent's counsel and the Registry as "clandestine communication".

[54] The applicant also made scandalous allegations against Prothonotary Morneau. He accused him of obstruction of justice, of criminal offences and of using "fraudulent intent to inflict permanent irreparable damages upon Applicant". As a result, he sought \$7.53 billion in damages against Prothonotary Morneau and the Federal Crown. He also requested that the proceedings be transferred to the Court of Québec to allow him to pursue criminal remedies against the subjects of his accusations.

[55] He made similar allegations against the governments of Norway and Germany, claiming that they too had committed obstruction of justice. He claimed that the Norwegian Ministry of Labour "ordered to all internal agencies to produce forged documents and not to participate in any investigation dealing with chemical poisoning within the University of Bergen".

[56] He also asserts that the University of Leipzig forged documents and falsified procedures and that German courts forged documents and destroyed his lawsuit. He further claims to have been refused representation by 50 lawyers in Germany as they were "afraid to disclose the issue of National-Socialism and of racism at the University of Leipzig".

[57] He also requested that Prothonotary Morneau be replaced as he had no knowledge of international law and made similar comments on Justice St-Louis who was working as case management judge.

(3) The Refusal or Failure to Abide by Rules or Orders of the Court

[58] A significant number of the applicant's documents were refused for filing as they did not comply with the Rules, either regarding form or service. The applicant completely ignores Court orders in that regard as he continues bringing non-compliant records and letters to the Registry. The applicant has attempted to use replies as motions to strike. He attempted to proceed by letters instead of motions. He also attempted to obtain a default judgment under section 210 of the Rules against the respondent although this Rule does not apply to judicial review proceedings. He served partial copies of his procedures on the respondent or attempted to file proceedings before having served them on the respondent.

(4) The Failure or Refusal to Pay Costs in Earlier Proceedings

[59] Regarding costs, the applicant has made no attempt to pay the \$350 in costs previously ordered by Justice St-Louis. Furthermore, the numerous frivolous and lengthy proceedings he has instituted have generated significant costs for the respondent which cannot be ignored by this Court.

(5) The Failure to Pursue the Litigation on a Timely Basis

[60] In this proceeding, the applicant was supposed to file his record in February 2016. The record had not been filed in July of the same year, when Justice St-Louis suspended the proceedings. In their latest decision in A-53-15, the Federal Court of Appeal dismissed the applicant's appeal because of his failure to advance the litigation in a timely fashion. He also made requests for extensions of time at the Supreme Court which were denied.

(6) The Relitigation of Matters

[61] The applicant has relitigated numerous matters. In fact, all his motions seem to restate the same incoherent arguments over and over, without regard to what is relevant to each specific motion. The applicant has also instigated numerous unsuccessful appeals. He seems to fail to understand the purpose of the proceedings he brings and to be unable to concentrate on the issues relevant to a specific step in the litigation. At every stage, he restated his arguments as if the motion was a new proceeding instead of focusing on the issues at play. As noted by Justice Layden-Stevenson in *Canada v Mennes*, 2004 FC 1731 at para 77, this tends to be indicative of vexatious proceedings.

V. Conclusion

[62] For these reasons, I am satisfied that the applicant meets many of the indicia of a vexatious litigant and that, absent an order pursuant to section 40 of the Rules, he will continue

to bring vexatious and unmeritorious proceedings in the Court. The motion under section 40 of the *Federal Courts Act* to have the applicant declared a vexatious litigant is granted.

[63] The respondent has also requested that I exercise my discretion under subsection 221(1) of the Rules and the Court's inherent powers to dismiss all the proceedings brought by the applicant that are still before this Court. I believe that it is appropriate for me to do so in the circumstances.

[64] As a result of its success, the respondent is entitled to have the costs of this motion. In light of the bill of costs filed by the respondent, the amount is to be fixed at \$2,000.00, payable forthwith.

ORDER

THIS COURT DECLARES the applicant a vexatious litigant; and

THIS COURT ORDERS that:

1. no further proceeding may be instituted by the applicant without previous authorization of this Court;
2. no further proceeding may be accepted by the Registry for filing without previous authorization of this Court;
3. the applicant's present proceeding is dismissed as vexatious and an abuse of process without the possibility of amendment; and
4. costs fixed in the amount of \$2,000.00 to be paid to the respondent forthwith.

"Danièle Tremblay-Lamer"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1532-15

STYLE OF CAUSE: VOLODYMYR HRABOVSKYY v HER MAJESTY THE QUEEN

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 4, 2017

REASONS AND ORDER: TREMBLAY-LAMER J.

DATED: APRIL 10, 2017

APPEARANCES:

Volodymyr Hrabovskyy

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Erin Morgan

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada
Montréal, Quebec

FOR THE RESPONDENT