

Federal Court



Cour fédérale

Date: 20170612

Docket: 17-T-24

Citation: 2017 FC 576

Ottawa, Ontario, June 12, 2017

PRESENT: The Honourable Madam Justice Gagné

BETWEEN:

DR. V.I. FABRIKANT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

[1] The Applicant is an inmate serving a life sentence at Archambault institution, who was declared a vexatious litigant by judgment of this Court rendered in 1999. By this preliminary motion in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106, he is asking the Court, once again, to waive the filing fees otherwise payable under Tariff A of the Rules, with respect to his motion for leave under subsection 40(3) of the *Federal Courts Act*, RSC 1985, c F-7 and, if leave is granted, with respect to his application for judicial review.

[2] On the merit of his application for judicial review, the Applicant intends to challenge the Offender Final Grievance Response of the Assistant Commissioner, Policy, of the Correctional Service of Canada, denying his request to obtain reimbursement of “all money spent for purchase of kosher milk and milk products”.

[3] The basic principles concerning motions for waiver of fees have been summarized by Prothonotary Ayles in a recent decision dismissing a similar motion from the same Applicant (*Fabrikant v Canada*, 2016 FC 954, appeal to the Federal Court dismissed on November 25, 2016 (T-1405-16), appeal to the Federal Court of Appeal pending (A-458-16)) [Previous Case].

[4] In fact, the Previous Case is just one of many cases brought before this Court by the Applicant, since he was declared vexatious. Just within the last few years, the Applicant has brought before this Court numerous similar motions, most of which were accompanied by a motion for waiver of fees. In many cases, the form of the Applicant’s documentation did not comply with the Rules and non-service of documentation or insufficient proof of service often caused numerous and unnecessary exchanges between the Applicant and officers of the Court.

[5] A decision on a request for fee waiver is discretionary in nature, and waiver should only be granted in special circumstances (Rule 55 of the Rules). In all cases, the applicant will have to demonstrate his or her impecuniosity such that the requirement to pay a filing fee would prevent him or her from pursuing a reasonably good claim before the Court (*Spatling v Canada (Solicitor General)*, 2003 FCT 443).

[6] In support of his motion in the Previous Case, the Applicant had filed an affidavit to the fact that he earned \$26.19 per two week period. In the present case, he states that he now earns \$30.24 every two weeks. In addition, the Respondent has filed a statement of the Applicant's account at the Correctional Service of Canada showing that as of April 19, 2017, the Applicant held a balance of \$234.47.

[7] Under the circumstances before me, I agree with the Respondent that the Applicant has failed to discharge his burden of proving his impecuniosity with sufficient particularity, and that the requirement to pay the filing fees would prevent him from pursuing his claim. In addition to the amount the Applicant earns every month, he has, at minimum, a few hundred dollars that he can decide to use as he pleases. I say "at minimum" because in his September 7, 2016 affidavit, the Applicant does not attest having disclosed all of his actual sources of income or "outside" bank account(s), just as he fails to refer to any financial record that could support his motion.

[8] In addition to having failed to convince me that a waiver is warranted to prevent an injustice, I am of the view that the fact that the Applicant has been declared a vexatious litigant militates against fee waiver. Section 40 of the Act is the prime tool to keep vexatious litigants away from judicial resources. As Justice David Stratas recently held, "[s]ection 40 reflects the fact that the Federal Courts are community property that exists to serve everyone, not a private resource that can be commandeered in damaging ways to advance the interests of one" (*Canada v Olumide*, 2017 FCA 42 at para 17). But in addition to section 40 of the Act, the payment of fees and the award costs under Rule 400 serve in deterring vexatious litigants from abusing the system and in deterring any litigant from filing vexatious or unnecessary procedures.

[9] Section 40 of the Act has been used in the Applicant's case almost two decades ago. Yet, when considering the number of motions he filed with this Court just within the last few years, not to say his numerous motions to reconsider the orders rendered and directions issued by this Court, the Applicant seems to still perceive the Court's resources as private ones. In fact, it could be said that a section 40 judgment was not sufficient in the Applicant's case, as his multiplication of proceedings and incessant motions remain a drain on public funds and on this Court's scarce resources.

[10] Finally, I also agree with the Respondent that the merits of the underlying proposed application for judicial review are weak, at best.

[11] The Applicant is Jewish and follows a kosher diet. He argues that since October 24, 2014, he has been forced to buy kosher milk from the canteen as he is of the view that the powdered milk distribution system in the penitentiary is not kosher. Yet it appears from the Assistant Commissioner's decision (at page 2) that the Applicant was provided with a certification from the Kashruth Council of Canada stating that the powdered milk is kosher, along with a confirmation by the Institution Rabbi that the powdered milk distribution system is compliant with established hygiene standards.

[12] Based on the motion record before me, it appears that the Applicant's application for judicial review is *prima facie* frivolous. Waiving the filing fees in those circumstances would essentially annihilate the effect of the section 40 judgment against the Applicant.

ORDER in 17-T-24

THIS COURT ORDERS that:

1. The Applicant's motion is dismissed;
2. Costs in the amount of \$100, payable forthwith, are granted in favour of the Respondent.

"Jocelyne Gagné"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: 17-T-24

STYLE OF CAUSE: DR. V.I. FABRIKANT v ATTORNEY GENERAL OF
CANADA

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

ORDER AND REASONS: GAGNÉ J.

DATED: JUNE 12, 2017

WRITTEN REPRESENTATION BY:

Dr. V.I. Fabrikant

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Joshua Wilner

FOR THE RESPONDENT

SOLICITORS OF RECORD:

William F. Pentney
Deputy Attorney General of
Canada
Ottawa, Ontario

FOR THE RESPONDENT