Federal Court  Cour fédérale

Date: 20201119

Docket: T-266-20

Citation: 2020 FC 1070

Ottawa, Ontario, November 19, 2020

PRESENT: The Honourable Madam Justice Fuhrer

BETWEEN:

ASSOCIATE CHIEF JUSTICE JOHN D. ROOKE

Applicant

and

DAVID WILLIAMS

Respondent

ORDER AND REASONS

I. Overview

[1] The Applicant is Associate Chief Justice of the Court of Queen's Bench of the Province of Alberta. The Respondent is a Christian minister of the Church of Ecumenical Redemption International [CERI]. The Applicant seeks to prohibit the Respondent from instituting further proceedings in the Federal Court, or continuing proceedings previously instituted by him, except with leave of the Court: section 40 of the *Federal Courts Act*, RSC 1985, c F-7. I agree with the

Applicant that, in the circumstances of the matter before me, the Respondent has both instituted vexatious proceedings persistently and conducted proceedings vexatiously. I therefore grant this Application and declare the Respondent a vexatious litigant, for the reasons that follow.

II. Background

[2] Shortly after the Applicant filed the Notice of Application in February 2020, the Applicant attempted twice to serve the Respondent personally. Because those attempts were unsuccessful, the Applicant forwarded the Notice of Application to the Respondent by email, twice to each of the Respondent's gmail.com and zoho.com email addresses. The Applicant also obtained the July 6, 2020 Order of Prothonotary Aalto for substituted service under Rule 136 of the *Federal Courts Rules*, SOR/98-106.

[3] The Respondent did not file a Notice of Appearance nor communicate to either the Applicant's counsel or the Court any intention to appear in this matter. The Respondent wrote to the Court, however, to dispute service of the "Claim." The letter, which is dated one week after the Notice of Application was filed, lists a street address that corresponds with one of the addresses at which the Applicant attempted to serve the Respondent personally. I therefore am prepared to infer the Application came to the Respondent's attention. Further, the Applicant provided the Respondent with a copy of the Applicant's Requisition for Hearing in accordance with the July 6, 2020 Order for substituted service. The Respondent did not attend the hearing.

[4] I note the letter purports to be from "DAVID WILLIAMS Living Estate Trust. Office of the General Executor. David of the Williams, General Executor/Trustee." Further, the letter

asserts that the writer is the General Executor of the DAVID WILLIAMS Estate and the DAVID WILLIAMS Living Estate Trust and that the writer has "full Power of Attorney, Executorship, and Trusteeship over the Trust and Estate and to act on behalf of DAVID WILLIAMS." In addition, the writer purports to "operate the Trust, Estate, and DAVID WILLIAMS [himself, in other words] without liability and that without recourse under the Trust." Like allegations in the Statements of Claim discussed below, these assertions are nonsensical. In my view, they represent, together with the Respondent's denial of service and non-appearance at the hearing, an unsuccessful effort to shield the Respondent somehow from the consequences of his actions including the outcome of this Application.

[5] The letter is exemplary of the Respondent's pattern of behaviour in his dealings with the judicial system. In 2016, the Respondent commenced a proceeding in the Ontario Superior Court of Justice against several Defendants, including Justice of the Peace Smythe. Noting that Madam Justice Smythe has "absolute immunity from civil suit," the Court dismissed the proceeding as appearing frivolous, vexatious or an abuse of process on its face.

[6] In June 2018, the Respondent filed a Statement of Claim in the Federal Court, again naming several Defendants, ostensibly in their "private, individual capacity," including the Applicant and Prothonotary Milczynski [First Statement of Claim]. In ordering the claim struck without leave to amend, Justice Heneghan agreed with the Defendants that the Plaintiff (Respondent in the matter before me) failed to set out material facts reasonably capable of showing a cause of action: *Williams v Payette*, 2019 FC 800 [*Williams*] at para 46. The Plaintiff appeared to seek relief for his arrest and subsequent prosecution in 2017.

[7] Justice Heneghan characterized the Statement of Claim as "rambling and disjointed, describing some kind of alleged misbehaviour by police officers […] in connection with his status as a Minister presiding over a church sanctuary": *Williams*, above at para 48. She noted that "absolute immunity lies in favour of persons holding judicial office for acts done in their judicial capacity"; and further, simply naming the judicial defendants in the style of cause does not amount to a cause of action: *Williams*, above at para 54.

[8] Noting that there were no proper pleadings and nothing on which the merits could be assessed, Justice Heneghan was satisfied the Claim was scandalous, frivolous or vexations, and represented an abuse of process: *Williams*, above at paras 66-68; Rules 221(1)(c) and 221(1)(f). Citing *Simon v Canada* (2011), 410 NR 374 (FCA), Justice Heneghan concluded "that no amendment could be made to the Statement of Claim to cure the radical defects": *Williams*, above at para 79.

[9] Before Justice Heneghan ordered the First Statement of Claim struck, the Respondent filed another Statement of Claim in December 2018 [Second Statement of Claim], ostensibly on his own behalf and that of several other ministers of the Church of Ecumenical Redemption International [CERI] but solely against the Applicant in the matter before me. It is clear from the Second Statement of Claim that the Plaintiffs targeted Associate Chief Justice Rooke for his decision in *Meads v Meads*, 2012 ABQB 571 [*Meads*]. Among other things, the Plaintiffs sought the repeal of portions of *Meads* or redaction of references to CERI and its ministers, a formal written apology from the Defendant, and his removal and disqualification as a judge. They also sought "total damages in the amount of twenty five million Canadian dollars (150,000,000.00)

[sic.]" versus "additional damages in the amount of $100,000,000.00 Canadian dollars" sought in the First Statement of Claim.

[10] In January 2019, Prothonotary Tabib issued a Direction noting (i) individuals could join in the same proceeding only if represented by the same solicitor and (ii) the Second Statement of Claim contained common law tort claims outside the jurisdiction of the Federal Court. The Plaintiff styled "minister David: Williams," who is not a solicitor, purported to act on behalf of all the Plaintiffs. The Direction therefore provided the Plaintiffs with an opportunity to show cause why the Second Statement of Claim should not be removed from the record.

[11] Having considered the parties' submissions in response to the Direction, Prothonotary Molgat ordered the Second Statement of Claim removed from the record in August 2019 for failure to comply with the Rules and lack of jurisdiction. As characterized by Justice Heneghan in the earlier proceeding, the Plaintiff's submissions demonstrated a pattern of behaviour "seeking to avoid the application of general rules of practice and procedure": *Williams*, above at para 77. In this regard, I agree with the Applicant that at its core, the Second Statement of Claim represented an attack on a member of the Canadian judiciary for issuing reasons – in another jurisdiction – with which the Plaintiffs disagree.

[12] For at least one year following Justice Heneghan's disposition involving the First Statement of Claim, the Plaintiff continued to correspond with/harry the Court on the matter necessitating at least eight Directions of Justice Heneghan and Prothontaries Tabib and Molgat. On at least two occasions, Justice Heneghan underscored that the Court was *functus officio* (i.e.

having fulfilled its mandate, the Court has no further role), to little or no avail. The most recent Direction, rejecting four letters from the Plaintiff/Respondent, issued in July 2020 in respect of both the earlier matter and the one before me.

III. Relevant Provisions

[13] See Annex A.

IV. Analysis

[14] An application under section 40 can be brought separately from any pending litigation: *Coote v Lawyers' Professional Indemnity Company (Lawpro)*, 2014 FCA 98 [*Coote*] at para 12.

[15] The Attorney General of Canada, through the Assistant Deputy Attorney General, Litigation, has consented to this Application: *Federal Courts Act*, s 40(2). Authority for the Assistant Deputy Attorney General, Litigation, to give consent on behalf of the Attorney General of Canada can be found in paragraph 24(2)(d) of the *Interpretation Act*, RSC 1985, c I-21: see also *Coote*, above at para 11.

[16] As noted by the Federal Court of Appeal, the Federal Courts are community property that serve everyone and thus, everyone with standing has unrestricted access: *Canada v Olumide*, 2017 FCA 42 [*Olumide*] at paras 17-18. The Federal Courts' resources, however, are finite; when squandered by a vexatious litigant, they are unavailable to others, especially those with

limited resources: *Olumide*, above at paras 19-20 The potential negative impact can be likened to expanding rings that form when a stone is dropped or thrown into water.

[17] Though the *Federal Courts Act* does not define what constitutes "vexatious" behaviour, Section 40 is aimed at litigants who bring proceedings for improper purposes, such as inflicting damage or wreaking retribution on the parties or the Court. It also is aimed at ungovernable litigants who flout procedural rules (thus requiring greater gatekeeping by the Court), ignore Court orders and directions, and attempt to re-litigate already decided issues and matters: *Olumide*, above at para 22. These are some of the hallmarks of vexatiousness, along with the parties sued, the nature of the allegations against them, and the language used: *Olumide*, above at para 32.

[18] Further, Section 40 may apply whether a party brings multiple proceedings, or conducts a single proceeding, vexatiously: *Olumide*, above at para 25. A declaration that a party is vexatious does not bar the litigant's access to the Court but rather represents a need to regulate access because of previous conduct – the vexatious litigant requires leave (i.e. permission) to start or continue a proceeding.

[19] Finally, although the Applicant bears the burden of proving vexatiousness, the Respondent needed to offer highly credible evidence to resist this Application in light of the previous findings of this and other Courts: *Olumide*, above at para 38. The Respondent did not file any evidence or make any substantive submissions, having chosen not to participate in the Application.

[20] Based on the Applicant's evidence and submissions, I find the Respondent's pattern of behaviour in his interactions with the judicial system includes, among others, the following hallmarks of vexatiousness:

- Failure to observe *Federal Courts Rules*;
- Unwarranted challenges to Applicant's representation by counsel ("alleged representatives") and materials filed by his counsel ("that paperwork violates my faith");
- Baseless accusations against the Applicant (for example, stating in a December 30, 2018 Notice to the Court and Notice to You: "I am aware of continued misconduct of a Federal judicial participant and defendant J.D Rooke (defendant) who is deliberately and negatively influencing and pre-prejudice and predispose and poison the judiciary and the courts while at the same time manufacturing evidence to his benefit");
- Repeated attempts to continue litigation and file material, ultimately rejected, at a time when the Court was *functus*; and
- Association with "minister Alfred [Fred] Potvin," a CERI minister declared a vexatious litigant by the Applicant, as well as the Federal Court and the Federal Court of Appeal: *Potvin (Re)*, 2018 ABQB 652; *Potvin (Re)*, 2018 ABQB 834; unreported March 1, 2019 Order of Justice Mosley on Federal Court File T-1546-18; *Potvin v Rooke*, 2019 FCA 285.

[21] Regarding the latter point, a side-by-side comparison of the First Statement of Claim with the Statement of Claim filed by minister Alfred [Fred] Potvin in Federal Court File T-1546-18 discloses that the documents are substantially the same including structure, headings and text, except for the facts outlined in the Introduction. That said, both Plaintiffs allege being arrested in their described chronology of events resulting in the Claim. Further, the Defendants overlap and include the Applicant in his "private, individual capacity."

[22] Based on the background and applicable law and principles outlined above, I am satisfied that the Respondent "has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner," within the meaning of Section 40 of the *Federal Courts Act*. I therefore grant the Application.

[23] At the hearing, the Applicant requested costs in the amount of $8,000. The Applicant submitted his bill of costs subsequent to the hearing, at the Court's request. The costs fall in the range of $7,000-10,000, with reference to columns III, IV and V of Tariff B. Having regard to the Applicant's bill of costs, I find the requested amount reasonable in the circumstances. Exercising my discretion under Rule 400(4) of the *Federal Court Rules*, I therefore award the Applicant the lump sum of $8,000 in costs inclusive of disbursements and applicable taxes, in lieu of assessed costs, payable forthwith to the Applicant.

THIS COURT ORDERS that:

1. The Respondent is declared a vexatious litigant;
2. The Respondent shall obtain leave of the Federal Court to institute any new proceedings or to continue any previously instituted proceedings in the Federal Court; and
3. The Respondent shall pay the Applicant forthwith the lump sum of $8,000 in costs, inclusive of disbursements and applicable taxes.

"Janet M. Fuhrer"
Judge

Appendix A: Relevant Provisions

Federal Courts Act, RSC 1985, c F-7

Vexatious proceedings	**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 cas, 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**
40 (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).	**40 (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.

Federal Courts Rules, SOR/98-106

Motion to strike	**Requête en radiation**
221 (1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it	**221 (1)** À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :
(c) is scandalous, frivolous or vexatious	**c)** qu'il est scandaleux, frivole ou vexatoire;
(f) is otherwise an abuse of the process of the Court,	**f)** qu'il constitue autrement un abus de procédure.
and may order the action be dismissed or judgment entered accordingly.	Elle peut aussi ordonner que l'action soit rejetée ou qu'un jugement soit enregistré en conséquence.

Interpretation Act, RSC 1985, c I-21

Power to act for ministers	**Exercice des pouvoirs ministériels**
24 (2) Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the act or thing is administrative, legislative or judicial, or otherwise applying to that minister as the holder of the office, include	**24 (2)** La mention d'un ministre par son titre ou dans le cadre de ses attributions, que celles-ci soient d'ordre administratif, législatif ou judiciaire, vaut mention :
(a) a minister acting for that minister or, if the office is vacant, a minister designated to act in the office by or under the authority of an order in council;	**a)** de tout ministre agissant en son nom ou, en cas de vacance de la charge, du ministre investi de sa charge en application d'un décret;
(b) the successors of that minister in the office;	**b)** de ses successeurs à la charge;
(c) his or their deputy; and	**c)** de son délégué ou de celui des personnes visées aux alinéas a) et b);
(d) notwithstanding paragraph (c), a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing, or to the words so applying.	**d)** indépendamment de l'alinéa c), de toute personne ayant, dans le ministère ou département d'État en cause, la compétence voulue.

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-266-20
STYLE OF CAUSE:	ASSOCIATE CHIEF JUSTICE JOHN D. ROOKE v DAVID WILLIAMS
PLACE OF HEARING:	TORONTO, ONTARIO (VIA TELECONFERENCE)
DATE OF HEARING:	NOVEMBER 12, 2020
JUDGMENT AND REASONS:	FUHRER J.
DATED:	NOVEMBER 19, 2020

APPEARANCES:

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