Federal Court  Cour fédérale

Date: 20110330

Docket: T-1067-10

Citation: 2011 FC 392

Montréal, Quebec, March 30, 2011

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

FRANCIS MAZHERO

Plaintiff/Respondent

and

ANDREW FOX
JACQUES BENOIT ROBERGE
and
NEIL SHARKEY

Defendants/Applicants

REASONS FOR ORDER AND ORDER

[1] This is a motion by defendants Andrew Fox and Jacques Benoit Roberge (the applicants) for an Order pursuant to subsection 40(1) of the *Federal Courts Act*, RSC 1985, c F-7 [*FCA*] barring the plaintiff Francis Mazhero (the respondent) from continuing the underlying action and from instituting any new proceedings in this Court without first seeking and obtaining leave.

[2] This motion arises in the context of an action instituted by the respondent on July 5, 2010 against the applicants, as well as against Justice Neil Sharkey of the Nunavut Court of Justice, in relation to an Order issued by Justice Sharkey on August 14, 2009, wherein the respondent was declared to be a vexatious litigant. In the underlying action, the respondent alleges that Justice Sharkey's Order was defamatory in nature and that, as such, Justice Sharkey should be prosecuted under section 300 of the *Criminal Code*, RSC 1985, c C-46. He further alleges in the underlying action that the applicants, both Crown prosecutors, were negligent in failing to prosecute Justice Sharkey in connection with the allegedly defamatory Order. The respondent seeks damages in excess of $2.5 million from the applicants, and in excess of $3 million from Justice Sharkey.

I. Issues

[3] Only two issues arise for consideration on this motion:

A. Are the respondent's procedural objections determinative?

B. Should the Court grant an Order pursuant to subsection 40(1) of the FCA?

II. Analysis

A. *Are the respondent's procedural objections determinative?*

[4] Before considering whether an Order pursuant to subsection 40(1) of the *FCA* is warranted, I will first address the procedural objections raised by the respondent in his reply submissions.

[5] First, the respondent claims that the current proceedings should be “stopped immediately” on account of the fact that neither the applicants nor Justice Sharkey paid fees in order to have their respective statements of defence filed. Subsection 1(1) of Tariff A of the *Federal Courts Rules*, SOR/98-106 [*FCR*] clearly outlines “fees payable on issuance”. Although fees are required for the issuance of a “statement of defence and counterclaim adding a party”, no fees are required for the issuance of a statement of defence alone.

[6] Second, the respondent claims that the applicants’ request for an order under subsection 40(1) of the *FCA* is “fundamentally defective” because it was brought by way of a motion as opposed to by way of application. This argument, too, is without merit. The Federal Court of Appeal in *Nelson v Canada (Minister of Customs and Revenue Agency)*, 2003 FCA 127 at para 22, 301 NR 359 indicated, “Section 40 of the Federal Court Act simply refers to an "application”. That term is sufficiently broad to include originating applications and motions."

[7] As to the respondent’s third objection, that the applicants have not obtained the necessary written consent from the Attorney General of Canada, once again – there is no real issue here. Subsection 40(2) of the *FCA* indicates that an application under subsection 40(1) “may be made only with the consent of the Attorney General of Canada”. However, in this case, that consent has been obtained. It is true that the initial written authorization, dated November 9, 2010, contained a typographical error in that it referred to an order under subsection “41(1)” instead of subsection 40(1) of the *FCA*. However, that typographical error was acknowledged, and a corrected authorization was filed on December 7, 2010.

[8] Finally, the respondent argues that the current motion is not properly before the Court because it was not brought in time. On September 17, 2010, Prothonotary Roza Aronovitch ordered that the applicants had until October 20, 2010 to file and serve an application under subsection 40(1) of the *FCA*. Although the applicants did not meet this deadline, they did request an extension by way of a letter to the Court dated October 21, 2010. They indicated that the delay was a result of the fact that the Attorney General had not yet provided them with the required written authorization. That extension was granted by Prothonotary Richard Morneau on October 25, 2010, giving the applicants until November 15, 2010 to file an application under subsection 40(1). The applicants did not file their materials until November 16, 2010. They requested an extension so that their submissions could be accepted for filing. On November 26, 2010, Prothonotary Morneau directed that despite being a day late, the applicants' motion record was, nonetheless, to be accepted for filing.

[9] The respondent points to the Federal Court of Appeal's decision in *Nowoselsky v Canada (Treasury Board)*, 2004 FCA 418, 329 NR 238 [*Nowoselsky*] for the proposition that a request for extension of time can only be brought under the *FCR* by way of a motion. It is true that the Court of Appeal indicated in *Nowoselsky* that the effect of Rules 8(1) and 47(2) of the *FCR* is that, "the Court cannot overcome the absence of a motion seeking an extension of time by acting on its own motion." However, the current matter is distinguishable. In *Nowoselsky*, the applicant failed, altogether, to request an extension of time for filing his appeal. In the current matter, although the applicants did not submit a formal Notice of Motion requesting an extension of the deadline set out in Prothonotary Aronovitch's September 17th Order, they did provide a written request, a copy of which was provided to the respondent.

[10] The respondent also points to my decision in *Apotex v Wellcome Foundation Ltd*, 2004 FC 574, 33 CPR (4th) 166. In that case, I found that a prothonotary had erred by ordering certain documentary disclosure, in part, because no formal motion was before the Court. The associated rules (Rules 225, 227 and 229) were similar to Rule 8(1) in that the Court was to act only "on motion". However, the circumstances of that case were significantly different. In that case, the prothonotary had ordered, without a formal motion, disclosure of certain documents prior to the parties issuing a statement of issues or an affidavit of documents. Such an order can result in the production of irrelevant documents and may be counterproductive.

[11] Given the special circumstances of this case, on the other hand, and upon reviewing Rule 55 of the *FCR* (which provides the Court discretion to dispense with strict compliance with the rules where appropriate), I cannot find that the directions issued by Prothonotary Morneau, allowing extended time for filing, were improper. The extensions did not result in any prejudice to the respondent, and, given the volume of material being submitted by the respondent (as will be reviewed below), it must be noted that allowing an application under subsection 40(1) of the *FCA* was certainly in line with the objective of securing the "just, most expeditious, and least expensive determination of every proceeding on its merits" as per Rule 3 of the *FCR*.

B. *Should the Court grant an Order pursuant to subsection 40(1) of the FCA?*

[12] Subsection 40(1) of the *FCA* reads:

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.

[13] In assessing whether a subsection 40(1) Order is warranted, regard should of course be had to the respondent's behaviour in this Court. However, proceedings initiated in other courts may also be considered (*Savard v Canada (Attorney General)*, 2006 FC 46 at para 9, 146 ACWS (3d) 470; *Canada v Warriner* (1993), 70 FTR 8, 44 ACWS (3d) 695 (TD)).

[14] In addition to the twelve proceedings initiated by the respondent in the Federal Court and Federal Court of Appeal, the respondent also has an extensive history before the Yukon Courts, as well as the Nunavut Courts. In *Mazhero v Yukon (Ombudsman & Privacy Commissioner)*, 2001 YKSC 520 at paras 39-41 [*Yukon*], Justice Marceau of the Yukon Supreme Court had the following to say about the respondent's litigation history to that point (May 9, 2001):

> 39 A search of the public record indicates that Mr. Mazhero has brought a multiplicity of proceedings, not only in this court, but also in the Yukon Court of Appeal and in the Federal Court of Canada. The matters revealed are as follows:
>
> 1. A total of 6 proceedings to the Supreme Court of Yukon…
> 2. A total of 2 appeals from decisions of this court…

> 3. A total of two proceedings before the Federal Court - Trial Division and one proceeding before the Federal Court - Appeal Division…
>
> 40 It is clear from reviewing the numerous matters instigated by Mr. Mazhero that he seeks to attack both the procedure of various public bodies designed to protect his rights, as well as their members, employees and even counsel. It is also clear that all of the proceedings initiated in this court that have been adjudicated upon to this date have been found to be completely without merit.
>
> 41 Due to the overly litigious nature of Mr. Mazhero, which, as noted above, has brought a total of 5 matters before this court, some with additional motions brought within the original proceeding, which have to date been completely without merit, it occurs to me this might be an appropriate situation in which to enjoin Mr. Mazhero from issuing further process in this court without first obtaining leave.

[15] In *Mazhero v Yukon (Human Rights Commission)*, 2002 YKCA 5, the Yukon Court of Appeal dismissed a number of the respondent's appeals on the basis that the respondent had not materially advanced the appeals towards a final hearing or determination. At paragraphs 16–19, it emphasized the speculative and repetitive nature of the proceedings instituted by the respondent:

> 16 …Many of the steps he has taken have been labelled in the past as unmeritorious, without legal foundation, irrelevant and repetitive. One judge below went so far as to consider enjoining the appellant from issuing further process in the Supreme Court without first obtaining leave.
>
> 17 I make no ruling on these observations by other judges. They are not pertinent to the applications before me, but they do illustrate that the appellant engages in multiple litigation, much of which is speculative. In such circumstances one would expect an appellant, confronted with motions to dismiss, to aggressively defend the merits of the appeal, or at least provide an explanation for the delays. Mr. Mazhero's failure to appear at all may be an indication that he too considers these appeals superfluous. Or, at a minimum, it indicates that the appellant has no settled intention to proceed with these appeals.
>
> …

> 19 The second point is that, while the courts must maintain accessibility for all members of the public, the courts also have a responsibility to protect parties from seemingly vexatious proceedings. The respondent Commission is a public body with a mandate to serve the public interest. The appellant has engaged in repetitive litigation against it alleging things that to date have been held to be unfounded. Undoubtedly such litigation has the capacity of interfering with the Commission's work by the expenditure of time and resources. This then has the potential of detrimentally affecting other members of the public who are relying on the Commission to protect their rights. The Commission, just like any other litigant, is entitled to know that proceedings will come to an end and when.

[16] In *Mazhero v Federation of Nunavut Teachers*, 2003 NUCJ 2, 179 ACWS (3d) 743 [*Federation of Nunavut Teachers*], the Nunavut Court of Justice addressed an application by the respondent arising out of numerous grievances the respondent had filed against his employer, the Government of Nunavut, in relation to his former job as a teacher in Chesterfield Inlet. These grievances related to: relocation and storage assistance, allegations of defamation, harassment, supposed violation of his *Charter* rights, invasion of privacy, wrongful dismissal, etc. Justice Browne expressed concern with respect to the volume of material filed by the respondent as well as his allegations against court staff. At paragraph 8, he indicated:

> 8 Mr. Mazhero files significantly more material than any other individual (Plaintiff or Respondent), so much so that the court registry staff and I, as case management judge, are unable to keep up with the filing and all of our other tasks...

At paragraph 10:

> 10 I am concerned about derogatory allegations that Mr. Mazhero is making against court staff. Those remarks are inappropriate and will not be tolerated.

[17] Justice Browne also noted the unmeritorious nature of the respondent's applications, as well as his preoccupation with procedure, at paragraph 28:

> 28 I have case managed this file since August. Mr. Mazhero is consumed with procedure and the grievance sits without progress. Most, if not all, of Mr. Mazhero's applications are destined for failure -- they do not advance the grievance process -- they have little merit or chance of success. The numerous filings and actions of Mr. Mazhero have put the court office under some pressure. Of more concern is the constant effort to undermine court staff, counsel, judges and others involved directly or peripherally with the grievance or court applications…

[18] In an Order issued by Justice Sharkey of the Nunavut Court of Justice on August 14, 2009, the respondent was declared to be a vexatious litigant for the purposes of the Nunavut Court of Justice and Nunavut Court of Appeal.

[19] In *Mazhero v Government of Nunavut*, 2010 NUCJ 11 [*Nunavut*], Justice Kilpatrick of the Nunavut Court of Justice highlighted the respondent's delay in prosecuting an application filed two years earlier:

> 6 This Court understands that the applicant is anxious to see his matter proceed to a hearing. However, this applicant's insistence that he be given a hearing date before July 30th to suit his convenience is neither reasonable nor practical due to the Court's heavy scheduling commitments. This is so particularly in view of the applicant's own decision to delay prosecution of the original application for two years in favor of procedural litigation in the Court of Appeal. If there is delay in the section 28 application being heard by this Court, the applicant would appear to be largely the author of his own misfortune.

[20] As already mentioned, the respondent has initiated 12 proceedings in this Court and in the Federal Court of Appeal over the last ten years. Of those 12 proceedings, 8 have been dismissed, 1 file has been ordered closed, and the remaining 3 have yet to be ultimately decided.

[21] Between March and June of 2001, the respondent initiated 4 proceedings. All were related to the judicial review of grievances that the respondent had filed with various boards and tribunals - some of which were grievances against his former employer, the Yukon Territorial Government.

[22] On March 19, 2001, the respondent brought an application for judicial review in the Federal Court of Appeal (A-185-01) of a decision of the Canada Industrial Relations Board (CIRB). The respondent sought to have one of his complaints to the CIRB referred for an expedited hearing. During the lifetime of this file, the respondent filed approximately 15 interlocutory motions, only one of which was partially successful. In fact, the volume of materials being filed with the Registry was so high that, on April 2, 2004, Justice Karen Sharlow directed that a temporary hold be placed on any further submissions:

> There are numerous items of correspondence and motions in this file that have yet to be dealt with by the Court. It is not possible to deal with them unless the flow of paper is stopped for a time. Therefore, until further notice, no further documents are to be submitted in this matter by any party…

[23] In this regard, Justice Sharlow later noted, "the propensity of Mr. Mazhero to file numerous motions, and to attempt to supplement his motions continually by letters and amendments, has contributed to the delay of which he now complains" (*Mazhero v Canada (Industrial Relations Board)*, 2004 FCA 151 at para 36, 320 NR 1). The respondent's application was ultimately dismissed on February 17, 2005 when the respondent did not appear for the hearing. The Court indicated that it was, "unable to find any error in the decision sought to be reviewed that would warrant [its] intervention" (*Mazhero v Canada (Industrial Relations Board)*, 2005 FCA 69 at para 1).

[24] On April 4, 2001, the respondent brought an application in the Federal Court (T-598-01) seeking the judicial review of a decision of the Yukon Teachers' Staff Relations Board which had refused to process a complaint filed by the respondent earlier that year. This application was dismissed in August 2001 by Justice Francis Muldoon who found that the Federal Court lacked jurisdiction to hear and determine the application.

[25] On April 11, 2001, the respondent brought another application in the Federal Court of Appeal (A-245-01) seeking judicial review of a decision made by the Yukon Public Service Staff Relations Board refusing to consolidate complaints made by the respondent earlier that year. The Court of Appeal dismissed this application on July 4, 2001 after indicating that it lacked jurisdiction to hear the matter.

[26] On June 29, 2001, the respondent appealed two orders that had been rendered in T-598-01, above, to the Court of Appeal (A-401-01). These appeals were ultimately dismissed because the respondent failed to respond to a Notice of Status Review within the time specified to do so.

[27] Between March 2004 and May 2005, the respondent initiated another five proceedings in the Federal Court and the Federal Court of Appeal.

[28] On March 12, 2004, the respondent brought an application (T-313-04) seeking judicial review in this Court of two decisions made by the Office of the Information Commissioner regarding records that the respondent had requested. Over the course of this application, the

respondent wrote to the Court approximately 22 times and brought a total of 12 interlocutory applications, all of which were dismissed. On January 5, 2006, this application was dismissed by Prothonotary Roger Lafrenière as being "so improper" as to be "bereft of any possibility of success".

[29] On April 20, 2004, the respondent initiated an action in this Court (T-792-04) alleging that a number of police officers had improperly arrested and detained him in Iqaluit in December of 2003. This action has yet to be finally determined. Thus far, the respondent has written to the Court approximately 89 times and has brought approximately 29 interlocutory applications. All 29 interlocutory applications were dismissed or held in abeyance except for 2 which were only partially successful.

[30] On November 25, 2004, the respondent brought an action in this Court (T-2106-04) against Justice Edward Richard of the Nunavut Court of Appeal, Justice Beverly Browne of the Nunavut Court of Justice, as well as a registry officer at the Supreme Court of Canada. The respondent alleged that the defendants had failed to adequately expedite 3 actions, 3 petitions and 3 appeals that he had initiated. On November 25, 2004, Justice Sean Harrington of this Court dismissed the respondent's action for being scandalous, frivolous and vexatious. In *Mazhero v Nunavut (Court of Justice, Judge)*, 2004 FC 1659 at para 3, 135 ACWS (3d) 415, Justice Harrington indicated:

> 3 I direct the statement of claim be accepted for filing so that it can be assigned a proper docket number. However, as Mr. Mazhero has not advanced any basis whatsoever for invoking this Court's jurisdiction, on my own motion I strike the statement of claim in its entirety pursuant to Rule 221, without leave to amend, and order that the action be dismissed. The statement of claim discloses no reasonable cause of action before this Court, is scandalous, frivolous and vexatious, and is otherwise an abuse of process of this Court.

[31] Justice Harrington's Order, however, did not end the matter for the respondent. He brought more than 10 further motions, all of which were dismissed. On September 28, 2005, Justice Yves de Montigny ordered an end to further submissions by the respondent with respect to this action, he ordered:

> All further documentation submitted to the Court by the Plaintiff on this file, be returned to him. The Court will entertain no further motions in this action. This order may be subject to change, pending the decision in the Plaintiff's file in the Court of Appeal.

[32] Despite Justice de Montigny's Order, the respondent brought a further motion on January 29, 2010 seeking to set aside Justice Harrington's 2004 Order. This motion was dismissed by Justice Harrington on March 11, 2010. Justice Harrington indicated that, "The defendants, the Honourable J. Edward Richard and the Honourable Beverly Browne have been vexatiously pursued in this Court…" (*Mazhero v Nunavut (Court of Appeal, Judge)*, 2010 FC 281 at para 14). Justice Harrington reiterated that this Court did not have jurisdiction over the cause of action alleged in the statement of claim.

[33] The respondent also appealed Justice Harrington's 2004 Order to the Federal Court of Appeal (A-703-04) on December 23, 2004. The respondent alleged that Justice Harrington's Order constituted a fraud and was an abuse of process. This appeal was ultimately dismissed by the Federal Court of Appeal for delay. The court records show that the respondent wrote to the Court approximately 26 times and brought approximately 11 interlocutory applications, all of which were dismissed, over the lifetime of this file.

[34] On May 17, 2005, the respondent initiated an application for judicial review in this Court (T-865-05) of a decision by the Executive Director of the Canadian Judicial Council. The respondent had filed complaints against a number of judges with the Executive Director and sought an order from this Court requiring the Executive Director to send those complaints to the Chairperson of the Canadian Judicial Council. The respondent named not only the Canadian Judicial Council as respondents in the matter, but also: Prothonotary Mireille Tabib, Prothonotary Roza Aronovitch, Justice Edward Richard, Justice Beverly Browne, Justice Sean Harrington, Justice Yvon Pinard, Justice Konrad von Finckenstein, Justice Robert Decary and Justice Denis Pelletier. On this file, the respondent wrote to the Court 19 times, and brought six interlocutory applications, all of which were dismissed. The overall application was dismissed on January 24, 2006 for delay.

[35] On July 5, 2010, the respondent initiated the action underlying the current motion (T-1067-10). The respondent's conduct to date on this file has been consistent with his conduct in the past. He has filed, or attempted to file, a number of interlocutory applications and documents. He has sent many letters to the Chief Justice of this Court, as well as a letter to the Chief Justice of the Supreme Court of Canada. His interaction with the Court Registry has been so extensive that on November 2, 2010, the Registry requested directions from the Court. On November 3, 2010, Prothonotary Morneau issued an Order restricting the documents that could be filed with the Court as follows:

> In order that this file does not become even further clogged or saturated, based on the principle that this Court has the implied jurisdiction to control its own process and upon a reading of rule 3 of the Federal Courts Rules (the Rules), this Court on its own motion hereby orders that unless and until ordered or directed otherwise by this Court or the case management judge to be designated, no document or motion material submitted in the past by the plaintiff for filing, or to be submitted by the plaintiff for filing, shall be filed by

> the Registry unless they are strictly related to the following motions and do respect the requirements of the Rules:
>
> 1. The motion by the plaintiff for summary judgment discussed in the direction of this Court dated September 17, 2010;
>
> 2. The motions by the defendants Andrew Fox and Jacques Roberge identified in paragraph 2 of the order of this Court dated September 17, 2010;
>
> 3. A motion in appeal of the instant order.

[36] The respondent continues to submit motion materials and other documents that fall outside the scope of the above Order. Those documents continue to be returned to the respondent. The respondent also continues to write letters to the Chief Justice of this Court. In one letter, received by the Court on December 30, 2010, the respondent alleged that a Prothonotary of this Court was a "natural born racist". In other letters, the respondent accuses a Prothonotary, and various Registry officers, of being in contempt of Court.

[37] Subsequent to commencing the underlying action, the respondent also brought an appeal in the Federal Court of Appeal on October 13, 2010 (A-384-10) related to the T-792-04 action, as well as an application for judicial review in this Court on February 23, 2011 (T-307-11). In relation to this latter application, on February 24, 2011, Prothonotary Morneau issued the following direction:

> In order not to defeat the letter or spirit of the order rendered by the Court on November 3, 2010 in file T-1067-10 or to allow said order (or any other order or direction issued thereafter in file T-1067-10) to be worked around by, inter alia, the opening of new files, and on the basis of the principle or rules relied upon in said order of November 3, 2010, the notice of application filed in the instant file on February 23, 2011 shall be struck out, the recorded entry and tariff receipt be cancelled and this file is hereby directed to be closed and terminated forthwith for all intents and purposes.

[38] Relief under subsection 40(1) of the *FCA* is exceptional and must only be granted sparingly and with the greatest of care (*Wilson v Canada (Revenue)*, 2006 FC 1535 at para 28, 305 FTR 250; *Canada v Olympia Interiors Ltd* (2004), 2004 FCA 195 at para 6, 323 NR 191). This is because the imposition of a requirement to seek leave before instituting a court proceeding acts as a limit on a person's access to the judicial system.

[39] At issue is whether the respondent has "persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner" within the meaning of subsection 40(1) of the *FCA*. I am satisfied that he has.

[40] In *Wilson v Canada (Revenue)*, 2006 FC 1535 at paras 30-31, 305 FTR 250, Justice Robert Barnes provided an overview of some of the indicia of vexatious behaviour:

> 30 The authorities have interpreted "vexatious" as being broadly synonymous with the concept of abuse of process: see *Foy v. Foy* (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 (Minister of National Revenue)*, [1992] F.C.J. No. 902 (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; *Canada v. Olympia Interiors Ltd.*, [2001] F.C.J. No. 1224, 2001 FCT 859; *Mascan Corp. v. French* (1988), 49 D.L.R. (4th) 434, 64 O.R. (2d) 1 (C.A.); *Foy*, above; *Canada Post Corp. v. Varma* (2000), 192 F.T.R. 278, [2000] F.C.J. No. 851; and *Nelson v. Canada (Minister of Customs and Revenue Agency)*, [2002] F.C.J. No. 97, 2002 FCT 77.

[41] While it could be argued that virtually all of the indicia of vexatious behaviour pointed to by Justice Barnes are engaged in the respondent's case, there are a few that stand out in particular.

[42] First and foremost, it is clear that the respondent has a history of initiating frivolous proceedings and interlocutory applications. Justice Marceau of the Yukon Supreme Court indicated in May 2001 that all of the proceedings initiated by the respondent in that Court, to that date, had been "found to be completely without merit" (*Yukon*, above). In November 2003, Justice Browne of the Nunavut Court of Justice noted that "most, if not all" of the respondent's applications were "destined for failure" (*Federation of Nunavut Teachers*, above). The same could be said of the actions, applications and appeals initiated by the respondent in this Court and in the Federal Court of Appeal. All proceedings initiated by the respondent at the Federal level that have reached final determination have been dismissed due to lack of jurisdiction, due to delay, or due to lack of merit.

[43] The sheer volume of unmeritorious interlocutory applications filed by the respondent over the past ten years is also remarkable. On a number of occasions, the respondent's zeal for filing interlocutory motions has resulted in this Court, and the Court of Appeal, issuing directions designed to place limits on what the respondent could file. Such was the case, for example, with the November 3, 2010 Order issued by Prothonotary Morneau in the underlying action.

[44] The second indicia that is clearly engaged by the respondent's behaviour is, "the making of unsubstantiated allegations of impropriety against the opposite party, legal counsel or the Court". The respondent, time and again, has levelled unmeritorious and unsubstantiated allegations of

impropriety against judges, prothonotaries, Registry officers, and legal counsel. Justice Browne of the Nunavut Court of Justice indicated that he was concerned with the unsubstantiated "derogatory allegations" made by the respondent “against court staff” (*Federation of Nunavut Teachers*, above). In T-2106-04, above, Justice Harrington found that the respondent had “vexatiously pursued” both Justice Richard of the Nunavut Court of Appeal and Justice Beverly Browne of the Nunavut Court of Justice. File T-865-05, above, involved unsubstantiated claims against a number of judges from various courts. And, of course, in the underlying action, the respondent claims against a judge of the Nunavut Court of Justice as well as two Crown counsel. Also of note in the underlying action is that the respondent has levelled a number of entirely unfounded accusations of impropriety against a prothonotary of this Court, as well as against a number of Registry officers.

[45] The third indicia clearly engaged here is, “the failure to pursue the litigation on a timely basis.” A review of the respondent’s litigation history shows that numerous appeals and applications were dismissed due to delay. The Yukon Court of Appeal dismissed a number of the respondent's appeals on the basis that he had not materially advanced those appeals towards a final hearing or determination (*Human Rights Commission*, above). Justice Kilpatrick of the Nunavut Court of Justice found in *Nunavut*, above, that the respondent had made a “decision to delay prosecution”. At the Federal level, files A-401-01, A-703-04, and T-865-05 were all dismissed for delay.

[46] For the foregoing reasons, I am satisfied that the respondent has persistently instituted vexatious proceedings and has conducted the underlying proceeding in a vexatious manner within the meaning of subsection 40(1) of the *FCA*. As such, I am granting the applicants’ motion and ordering that no further proceedings be instituted by the respondent in this Court except by leave of

this Court, and that the underlying action against the defendants Andrew Fox, Jacques Benoit Roberge and Neil Sharkey not be continued except by leave of this Court.

ORDER

THIS COURT ORDERS that

1. The respondent, Francis Mazhero, is barred from bringing any further proceedings in this Court except with leave of the Court.
2. The underlying action against the applicants Andrew Fox, Jacques Benoit Roberge and Neil Sharkey not be continued except by leave of the Court.
3. The respondent, Francis Mazhero, shall pay to the applicants costs in the amount of $1,000.00 payable forthwith.

"Danièle Tremblay-Lamer"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1067-10
STYLE OF CAUSE:	FRANCIS MAZHERO v ANDREW FOX ET AL.
PLACE OF HEARING:	Montréal, Quebec
DATE OF HEARING:	March 22, 2011
REASONS FOR ORDER:	TREMBLAY-LAMER J.
DATED:	March 30, 2011

APPEARANCES:

Francis Mazhero	FOR THE PLAINTIFF/RESPONDENT (ON HIS OWN BEHALF)
Andrew Fox	FOR THE DEFENDANTS/APPLICANTS ANDREW FOX and JACQUES BENOIT ROBERGE
Stéphanie Pearce	FOR THE DEFENDANT/APPLICANT NEIL SHARKEY

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