Federal Court  Cour fédérale

Date: 20170615

Docket: T-1138-16

Citation: 2017 FC 596

Ottawa, Ontario, June 15, 2017

PRESENT: The Honourable Mr. Justice LeBlanc

BETWEEN:

ATTORNEY GENERAL OF CANADA

Applicant

and

LARRY PETER KLIPPENSTEIN

Respondent

ORDER AND REASONS

[1] The Attorney General applies for an order declaring the Respondent, Mr. Klippenstein, a vexatious litigant under section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [the Act]. It claims that since 2008, Mr. Klippenstein, a self-represented litigant, has persistently instituted vexatious proceedings and conducted proceedings in a vexatious manner in this Court and other Courts, including bringing an action to determine an issue that has already been determined by a court of competent jurisdiction, initiating meritless proceedings and motions, rolling forward grounds and issues from one proceeding to another, persistently bringing unsuccessful appeals

from judicial decisions including unsuccessful applications for leave to the Supreme Court of Canada, seeking to commence more than 75 private prosecutions, all of which were either dismissed or stayed, raising unfounded allegations of bias against members of the judiciary, and failing to pay the costs of unsuccessful proceedings.

[2] Section 40 reads as follows:

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.

[3] Recently, in *Canada v Olumide*, 2017 FCA 42 [*Olumide*], Justice Stratas of the Federal Court of Appeal offered its views on the proper interpretation of section 40 which he characterized as "an important tool to be used in appropriate circumstances in a timely manner" (*Olumide*, at para 13) and as reflective of the fact the Federal Courts "are community property that exists to serve everyone, not a private resource that can commandeered in damaging ways to advance the interests of one" (*Olumide*, at para 17).

[4] The aims and role of section 40 were described as follows by Justice Stratas:

> [22] Section 40 is aimed at litigants who bring one or more proceedings that, whether intended or not, further improper purposes, such as inflicting damage or wreaking retribution upon the parties or the Court. Section 40 is also aimed at ungovernable litigants: those who flout procedural rules, ignore orders and directions of the Court, and relitigate previously-decided proceedings and motions.
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> [23] Section 40 exists alongside other express, implied or necessarily incidental powers the Federal Courts have to regulate litigants and their proceedings. These are found in the *Federal Courts Act* and the *Federal Courts Rules*, SOR/86-106. Other powers emanate from the Federal Courts' plenary jurisdiction to regulate their proceedings: *Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626; 157 D.L.R. (4th) 385. All of these powers are specific to particular proceedings before the Courts.
>
> [24] This sheds light on the role of section 40. Where a litigant's misbehaviour is specific to a particular proceeding and isolated in its harm and unlikely to be repeated, the usual powers to regulate litigants and their proceedings will suffice. But where a litigant's misbehaviour is likely to recur in multiple proceedings or actually recurs in later proceedings and where the purposes of section 40 are implicated by the nature or quality of the litigant's conduct, section 40 remedies become live.

[5] In discussing the meaning of the term "vexatious" for the purposes of section 40, Justice Stratas pointed out that vexatiousness need not be precisely defined as it comes in all shapes and sizes. He gave the following non-exhaustive list:

> [32] […] Sometimes it is the number of meritless proceedings and motions or the reassertion of proceedings and motions that have already been determined. Sometimes it is the litigant's purpose, often revealed by the parties sued, the nature of the allegations against them and the language used. Sometimes it is the manner in which proceedings and motions are prosecuted, such as multiple, needless filings, prolix, incomprehensible or intemperate affidavits and submissions, and the harassment or victimization of opposing parties.
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> [33] Many vexatious litigants pursue unacceptable purposes and litigate to cause harm. But some are different: some have good

> intentions and mean no harm. Nevertheless, they too can be declared vexatious if they litigate in a way that implicates section 40's purposes: see, *e.g.*, *Olympia Interiors* (F.C. and F.C.A.), above.
>
> [34] Some cases identify certain "hallmarks" of vexatious litigants or certain badges of vexatiousness: see, for example, *Olumide v. Canada*, 2016 FC 1106 at paras. 9-10, where the Federal Court granted relief under section 40 against the respondent; and see paragraph 32 above. As long as the purposes of section 40 are kept front of mind and the hallmarks or badges are taken only as non-binding *indicia* of vexatiousness, they can be quite useful.

[6] These "hallmarks" or "badges" referred to in para 34 of *Olumide* were defined as follows in *Olumide v Canada*, 2016 FC 1106, at para 10:

> a) being admonished by various courts for engaging in vexatious and abusive behaviour;
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> b) instituting frivolous proceedings (including motions, applications, actions and appeals);
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> c) making scandalous and unsupported allegations against opposing parties or the Court;
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> d) relitigating issues which have been already been decided against the vexatious litigant;
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> e) bringing unsuccessful appeals of interlocutory and final decisions as a matter of course;
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> f) ignoring court orders and court rules; and
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> g) refusing to pay outstanding costs awards against the vexatious litigant.

[7] Justice Stratas reminded that a declaration that a litigant is vexatious does not bar the litigant's access to the courts but only regulates it by requiring the litigant to seek - and obtain - leave before starting or continuing a proceeding (*Olumide*, at para 27).

[8] In the case of Mr. Klippenstein, the Attorney General also brought a section 40 application before the Federal Court of Appeal. Both applications rely on the same facts and the application records are identical.

[9] On May 29, 2017, Justice Stratas granted the Attorney General's application, thereby declaring Mr. Klippenstein a vexatious litigant and forbidding him from starting any new proceedings in the Federal Court of Appeal unless that Court grants leave (*Canada (Attorney General) v Klippenstein*, 2017 FCA 115 [*Klippenstein FCA*]). Justice Stratas described Mr. Klippenstein's profile as a litigant in these terms:

> [3] The respondent has prosecuted tens of proceedings in various courts, including thirty files in the Manitoba Court of Queen's Bench and the Manitoba Court of Appeal and ten applications for leave to appeal to the Supreme Court of Canada. In these proceedings, the respondent often relitigates matters that have already been determined, frequently not satisfying costs awards made against him. As well, the respondent has started more than seventy-five private prosecutions, all of which have been dismissed or delayed. […]

[10] Justice Stratas held that these proceedings "exhibit[ed] many of the hallmarks or badges of vexatious behaviour discussed at paragraph 34 of Olumide" (*Klippenstein FCA*, at para 3).

[11] Mr. Klippenstein's activity before this Court can be summarized as follows.

[12] On September 20, 2012, Mr. Klippenstein sought judicial review of a decision of the Canadian Human Rights Commission (T-1744-12). During this proceeding, the Registry sought the Court's direction following Mr. Klippenstein's attempt to file a motion with unsworn affidavits. On October 5, 2012, Justice Gleason directed that the Respondent either swear his

affidavit on a version of the Bible acceptable to him or affirm it in accordance with the *Canada Evidence Act*, RSC, 1985, c C-5 [Justice Gleason's Directive].

[13] Mr. Klippenstein's application (T-1744-12) was then dismissed for delay by Justice Manson on April 30, 2013 [Justice Manson's Order]. On May 23, 2013, Mr. Klippenstein applied for leave to appeal Justice Manson's Order directly to the Supreme Court of Canada. On October 17, 2013, the Supreme Court of Canada dismissed the appeal.

[14] On May 16, 2013, Mr. Klippenstein filed a statement of claim (T-874-13) in which he sought, among other things, to charge the Registry with contempt of court for failing to provide him with a means "of Oath that is not an offense to [his] conscience".

[15] On July 8, 2013, this statement of claim was struck without leave to amend by Prothonotary Lafreniere on the premise that (i) it disclosed no reasonable cause of action and (ii) it constituted an abuse of process.

[16] Mr. Klippenstein's appeal of Prothonotary Lafreniere's Order was dismissed on February 25, 2014, by Justice Boivin in *Klippenstein v Canada* 2014 FC 174 [Justice Boivin's Order]. Mr. Klippenstein sought leave to appeal Justice's Boivin Order to the Federal Court of Appeal. He also sought directions from the Federal Court of Appeal in an attempt to have the Court appoint him a litigation guardian. On April 14, 2014, Justice Pelletier dismissed such request.

[17] On September 30, 2014, the appeal of Justice Boivin's Order was dismissed by Justice Near in *Klippenstein v Canada*, 2014 FCA 216 who also denied Mr. Klippenstein leave to appeal his decision to the Supreme Court of Canada [Justice Near's Decision]. Mr. Klippenstein nevertheless filled for leave to appeal the Justice Near's Decision before the Supreme Court of Canada (File No. 36219).

[18] Prior to the Supreme Court's dismissal of his application for leave on March 19, 2015, Mr. Klippenstein filed a motion for a sealing order regarding File No. 36219 and for the appointment of a litigation guardian. Such motion was granted in part on May 25, 2015 as the Registrar accepted that the application for leave and the reply of the Respondent to be sealed. It did not address the litigation guardian issue.

[19] On October 1, 2014, Mr. Klippenstein sought to have Justice Gleason's Directive converted into an Order so he could appeal it. On November 4, 2014, Justice Gleason dismissed that request. The Respondent appealed Justice Gleason's Order to the Federal Court of Appeal.

[20] Following the Applicant's motion for summary dismissal, Mr. Klippenstein requested an oral hearing. In his motion record, the Respondent raised once more the need to appoint a litigation guardian. On February 25, 2015, Justice Scott issued a Direction to the effect that no oral hearing would be granted. He did not address the appointment of a litigation guardian issue.

[21] On February 27, 2015, Justice Dawson for the Federal Court of Appeal dismissed the appeal of Justice Gleason's Order [Justice Dawson's Order]. Mr. Klippenstein sought leave to

appeal Justice Dawson's Order to the Supreme Court of Canada. The latter dismissed the application for leave on July 2, 2015.

[22] On July 29, 2015, the Applicant sought written assessment of costs following Justice Dawson's Order. On December 4, 2015, Assessment Officer Bruce Preston assessed the Bill of Costs. On December 21, 2015, the Respondent challenged the assessment and threatened to press charges of fraud upon Mr. Preston. On February 3, 2016, Justice St-Louis dismissed the motion.

[23] In the context of the present application, Mr. Klippenstein has filed a Notice of Constitutional Question in which he raises again the issues related to the taking of the Oath and the appointment of a litigation guardian as well as allegations of partiality.

[24] In *Klippenstein FCA*, Justice Stratas noted the following:

> [8][Mr. Klippenstein] continues to litigate the issues of the oath and the need for a litigation guardian even though both have been decided against him. In this section 40 application, rather than defending the application on the merits, [Mr. Klippenstein] again raises these issues. During oral argument on this application, in response to the Court's questioning, [Mr. Klippenstein] confirmed that the claim he wishes to assert concerns only the previously decided issues of the oath and litigation guardian. There is no other claim.

[25] This Court is facing the exact same situation.

[26] With respect, I am satisfied, as was Justice Stratas in *Klippenstein FCA*, that the multiple proceedings brought before this Court - and other courts for that matter - by Mr. Klippenstein

exhibit many of the hallmarks or badges of a vexatious litigant and that unless relief is granted under section 40 of the Act, Mr. Klippenstein "will 'likely … recur in multiple proceedings' in this Court" (*Klippenstein FCA*, at para 4).

[27] In addition, given that the multiple proceedings brought by Mr. Klippenstein before the Federal Courts are closely intertwined, I see no reason to conclude differently than did Justice Stratas.

[28] Again, as Justice Stratas pointed out, an order under section 40 of the Act "does not take away the respondent's right to assert an issue in an application or appeal in this Court, should the need arise. Instead, it adds a measure of regulation in the exercise of that right" (*Klippenstein FCA*, at para 10). The same applies to any issue in a proceeding in this Court that Mr. Klippenstein would want to assert, should the need arise.

[29] The Attorney General's application will therefore be granted. The Attorney General does not seek costs. None shall be awarded.

ORDER

THIS COURT ORDERS, for the reasons stated above, that:

1. No further proceeding may be instituted by the Respondent in the Federal Court except with leave of the Court;
2. No previously proceeding instituted by the Respondent in the Federal Court may be continued except with leave of the Court;
3. No costs.

"René LeBlanc"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1138-16
STYLE OF CAUSE:	ATTORNEY GENERAL OF CANADA v LARRY PETER KLIPPENSTEIN
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