Federal Court  Cour fédérale

Date: 20220728

Docket: T-1999-21

Citation: 2022 FC 1135

Ottawa, Ontario, July 28, 2022

PRESENT: Mr. Justice Gascon

BETWEEN:

HER MAJESTY THE QUEEN (IN RIGHT OF CANADA) AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA

Plaintiff

and

ZOLTAN ANDREW SIMON

Defendant

JUDGMENT AND REASONS

I. Overview

[1] The Plaintiff, the Attorney General of Canada [AGC], brings this application under section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [Act], for an order declaring the Defendant, Mr. Zoltan Andrew Simon, a vexatious litigant. The AGC asks that Mr. Simon be

prohibited from bringing litigation before this Court without obtaining prior authorization from the Court.

[2] The AGC submits that Mr. Simon has abused the process of this Court and other courts in Canada by filing meritless and repetitive proceedings. The AGC alleges that Mr. Simon's vexatious behaviour includes repeatedly instituting frivolous and abusive proceedings, re-litigating issues that have already been dismissed, unsuccessfully appealing decisions as a matter of course and wasting scarce judicial resources Mr. Simon has already been declared a vexatious litigant in the Federal Court of Appeal [FCA], in the courts of British Columbia and in the courts of Alberta.

[3] Mr. Simon opposes the AGC's request, claiming that it is part of a litigation strategy adopted by the AGC to prevent him from presenting his arguments to the Court. Mr. Simon further asserts that the AGC's request defeats the course of justice and that the AGC has failed to plead the elements necessary to establish a vexatious litigant claim against him. Mr. Simon also maintains that the AGC's attempt to declare him a vexatious litigant violates the rules of procedural fairness.

[4] The sole issue to be determined in this application is whether Mr. Simon should be declared a vexatious litigant pursuant to section 40 of the Act.

[5] For the reasons that follow, I agree with the AGC and declare Mr. Simon a vexatious litigant. On the evidence presented, I am satisfied that Mr. Simon's litigation conduct has been

abusive and disruptive and has only led to a significant waste of resources, without any benefit for the pursuit of justice. It is now necessary to subject Mr. Simon to a leave requirement if he wants to begin new proceedings or to continue proceedings in this Court.

II. Background

A. *The procedural context*

[6] To put the AGC's application in the proper context, a review of the procedural history of this matter is in order.

[7] On August 25, 2021, the AGC brought a notice of motion in Court file no. T-881-21 under section 369 of the *Federal Courts Rules*, SOR/98-106 [Rules], seeking (1) an order pursuant to subsection 221(1) of the Rules striking out, in its entirety and without leave to amend, the statement of claim that had been filed by Mr. Simon, his current wife, Ms. ZuanHao Zhong, and her son, Mr. Jian Feng Ye, in that matter [Motion to Strike], and (2) an order pursuant to section 40 of the Act declaring Mr. Simon a vexatious litigant in this Court [Vexatious Litigant Motion]. In that Court file, Mr. Simon was the plaintiff and the AGC was the defendant.

[8] In a detailed response motion record exceeding 1500 pages, Mr. Simon objected to the disposition of the two motions in writing, and requested an oral hearing. By way of a Direction issued on September 17, 2021, the Court determined that, in light of the dual dimension of the AGC's notice of motion (i.e., Motion to Strike and Vexatious Litigant Motion) and the response

materials received, Mr. Simon should be given the opportunity to file affidavit evidence in response to the Vexatious Litigant Motion. The Court also decided that a short hearing should be held to allow the parties to make oral submissions. Mr. Simon was therefore granted permission to serve and file, within 30 days from the date of the Direction, affidavit evidence in response to the Vexatious Litigant Motion. A hearing was convened on January 6, 2022, to hear the parties' submissions on the two motions.

[9] On October 15, 2021, Mr. Simon filed a lengthy 225-paragraph affidavit with supporting materials exceeding 1200 pages [Affidavit], in response to the AGC's Vexatious Litigant Motion.

[10] On December 23, 2021, Mr. Simon sent a letter informing the Court that he intended to file a notice of discontinuance in Court file no. T-881-21. Mr. Simon's notice of discontinuance was indeed received by the Court on December 29, 2021.

[11] On December 31, 2021, the Court issued another Direction in which it accepted Mr. Simon's notice of discontinuance as of December 29, 2021, declared that the proceeding in Court file no. T-881-21 was concluded and observed that the AGC's Motion to Strike was therefore moot. Further to the AGC's request to that effect, the Court however ordered that the Vexatious Litigant Motion be continued as a separate notice of application by the AGC against Mr. Simon, and directed the Registry to open a new Court file for this application, relying on *Olumide v Canada*, 2016 FCA 287 at paragraphs 36–46.

[12] The hearing of the AGC's Vexatious Litigant Motion proceeded as planned on January 6, 2021, albeit as a notice of application in this Court file no. T-1999-21. Further to the December 31, 2021 Direction, all the materials that had already been filed by both parties in relation to the Vexatious Litigant Motion were transferred in the new Court file, including the AGC's motion materials, Mr. Simon's motion record in response, Mr. Simon's Affidavit, the Court's Directions and the various letters sent by the parties in December 2021.

[13] I pause to note that, in light of this procedural history, the style of cause in the current application must be modified to remove the names of ZuanHao Zhong and Jian Feng as Defendants, as they are not parties to the vexatious litigant conclusions sought by the AGC in this application.

B. ***The factual context***

[14] Mr. Simon's dealings with the Canadian justice system started several years ago and have implicated the Canadian immigration authorities as well as numerous federal and provincial courts.

[15] In January 1999, Mr. Simon entered into a sponsorship agreement with the Canadian immigration authorities to allow his then spouse, Ms. Reyes, and her sons to immigrate to Canada. At the time, Mr. Simon undertook to provide financial support for his spouse. Shortly after her arrival in Canada, Ms. Reyes and Mr. Simon parted ways. Following the couple's separation, Ms. Reyes received social assistance benefits from the province of British Columbia for a number of years. Based on his sponsorship agreement, Mr. Simon incurred a sponsorship

debt to the province of British Columbia, equal to the social assistance payments received by his former spouse. Mr. Simon says that he was unaware of these payments until he learned, some time in 2007, that the province of British Columbia held him liable to repay them as sponsor to Ms. Reyes. In 2008 and 2009, the province of British Columbia garnished funds standing to Mr. Simon's credit in his tax account with the Canada Revenue Agency. A bankruptcy court ultimately discharged the outstanding balance and interest of Mr. Simon's sponsorship debt, after Mr. Simon became bankrupt in 2010.

[16] In the meantime, in 2006, Mr. Simon remarried with Ms. Zhong, a citizen of China. In February 2007, Mr. Simon applied to sponsor his second wife, Ms. Zhong, and her son, Mr. Ye, for immigration to Canada. This second sponsorship application was refused by the Canadian immigration authorities, as Mr. Simon's previous sponsorship breach disqualified him from being a sponsor.

[17] Since that refusal, Mr. Simon feels deeply aggrieved and he has launched numerous proceedings and recourses regarding his immigration sponsorship debt and the refusal of his second immigration sponsorship application, to obtain what he feels is rightfully his in the circumstances. Since 2007, Mr. Simon brought unsuccessful judicial proceedings in various courts at various levels and in various jurisdictions. Attached at Schedule A to these reasons is a list of all the actions and applications filed by Mr. Simon before this Court, the FCA and other courts in Canada (namely, courts in British Columbia and in Alberta, as well as the Tax Court of Canada). These actions and applications add up to more than 20 matters before six different Canadian courts, including applications for leave to appeal at the Supreme Court of Canada. Mr.

Simon's proceedings all directly or indirectly relate to his immigration sponsorship debt or for the refusal of his second immigration sponsorship application. The most recent claim filed by Mr. Simon in this Court was Court file no. T-881-21, initiated on June 1, 2021, which led to the current request by the AGC to declare him a vexatious litigant in this Court.

[18] Three Canadian courts have already declared Mr. Simon a vexatious litigant, namely, the FCA, the Supreme Court of British Columbia and the Alberta Court of Queen's Bench (*Simon v Canada (Attorney General)*, 2019 FCA 28 [*Simon FCA*]; *Simon v Canada (Attorney General)*, 2017 BCSC 1438 [*Simon BC*], leave to appeal denied, 2018 BCCA 54; *Simon v Canada (Attorney General)*, 2019 ABQB 947 [*Simon Alberta*]).

C. *Order sought*

[19] The AGC requests that Mr. Simon be declared a vexatious litigant in this Court, and that he shall thus not institute new proceedings, whether acting for himself or having his interests represented by another individual in this Court, except by leave of the Court. The AGC also sought that all proceedings instituted by Mr. Simon in this Court and currently before this Court be stayed, and that the stay shall not be lifted and the proceedings shall not continue unless leave is granted by this Court. At the hearing, the AGC however acknowledged that, with the discontinuance of Court file no. T-881-21, Mr. Simon no longer had any pending action or application before this Court.

[20] The AGC further requests that Mr. Simon be ordered to pay fixed costs of $1,500 forthwith.

III. Analysis

[21] It must be observed, to begin with, that this judgment only deals with Mr. Simon's behaviour and whether it is vexatious. The Court is not called upon to revisit or rule on the validity of the various decisions rendered by the Canadian immigration authorities or by other jurisdictions, or on the merits of Mr. Simon's complaints against the treatment of his immigration sponsorship debt and the rejection of his second immigration sponsorship application. The Court must instead solely decide whether Mr. Simon is exercising his right to litigate in a reasonable manner. It is therefore Mr. Simon's behaviour in the face of unfavourable decisions and vis-à-vis the authority of the courts that is at issue.

A. *Analytical framework*

[22] In Canada, litigants have a right to access courts, as courts are "community property" that exist to serve everyone (*Simon FCA* at paras 9–10; *Canada v Olumide*, 2017 FCA 42 at paras 17–19 [*Olumide FCA*]). However, this right is not without limits, and measures can be taken to regulate access to courts and to their finite resources. Regular rules of procedure are meant to do so but, in some circumstances, tougher measures can be necessary to protect judicial resources (*Simon FCA* at para 10, referring to *Fabrikant v Canada*, 2018 FCA 171; *Fabrikant v Canada*, 2018 FCA 206 and *Fabrikant v Canada*, 2018 FCA 224). This is the purpose and raison d'être of vexatious litigant declarations.

[23] Section 40 of the Act is the relevant disposition to make such declarations in the federal courts. It 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.

Attorney General of Canada

(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).

Procureur général du Canada

(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.

Application for rescission or leave to proceed

(3) A person against whom a court has made an order under subsection (1) may apply to the court for rescission of the order or for leave to institute or continue a proceeding.

Requête en levée de l'interdiction ou en autorisation

(3) Toute personne visée par une ordonnance rendue aux termes du paragraphe (1) peut, par requête au tribunal saisi de l'affaire, demander soit la levée de l'interdiction qui la frappe, soit l'autorisation d'engager ou de continuer une instance devant le tribunal.

Court may grant leave

(4) If an application is made to a court under subsection (3)

Pouvoirs du tribunal

(4) Sur présentation de la requête prévue au paragraphe

for leave to institute or continue a proceeding, the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.	(3), le tribunal saisi de l'affaire peut, s'il est convaincu que l'instance que l'on cherche à engager ou à continuer ne constitue pas un abus de procédure et est fondée sur des motifs valables, autoriser son introduction ou sa continuation.
No appeal	**Décision définitive et sans appel**
(5) A decision of the court under subsection (4) is final and is not subject to appeal.	**(5)** La décision du tribunal rendue aux termes du paragraphe (4) est définitive et sans appel.

[24] In sum, section 40 of the Act enables this Court to create an extra layer of regulation and monitoring where necessary to prevent some litigants from squandering judicial resources by duplicative proceedings, pointless litigation, the style or manner of their litigation, their motivations, intentions, attitudes and capabilities while litigating, or any combination of these things (*Simon FCA* at paras 15–16). Section 40 reflects "Parliament's recognition that such behaviour can impose inordinate costs and other burdens on other parties to proceedings, as well as on the Court itself. To the extent that such behaviour typically requires a much greater allocation of scarce judicial and registry resources than would otherwise be required, it diverts those resources away from other meritorious proceedings" (*Birkich v Monashee Land Surveying and Geomatics Ltd*, 2021 FC 1278 at para 18). In other words, vexatious litigants limit access to justice by other litigants.

[25] The legal test applicable to vexatious litigant declarations is straightforward: "where continued unrestricted access of a litigant to the courts undermines the purposes of section 40, relief should be granted" (*Simon FCA* at para 19; *Olumide FCA* at para 31).

[26] In *Olumide FCA*, at paragraphs 19 and 22, the FCA explained the purpose of vexatious litigant declarations and the categories of situations in which such orders may be made:

> [19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.
>
> […]
>
> [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.

[27] Vexatiousness comes in all shapes and sizes. No clear or fixed set of binding indicia, badges or hallmarks has been deemed determinant to establish whether a person has exercised his, her or its right to litigate in a vexatious, excessive or unreasonable manner (*Olumide FCA* at para 34; *Olumide v Canada*, 2016 FC 1106 at paras 10–11 [*Olumide FC*]). However, some behaviours have been identified as particularly relevant. These specific traits or "hallmarks" of a vexatious litigant include: being admonished by other courts for engaging in vexatious and abusive behaviour; instituting frivolous, unnecessary or inappropriate proceedings (including motions, applications, actions or appeals); making scandalous or unsupported allegations against

opposing parties; re-litigating settled issues; unsuccessfully appealing decisions as a matter of course; and ignoring rules, court orders and/or cost awards (*Canada (Attorney General) v Yodjeu*, 2019 FCA at para 18; *Olumide FCA* at paras 32, 34; *Olumide FC* at paras 9–10). Moreover, in considering whether to issue an order under section 40, the Court may consider and give much weight to a finding of vexatiousness made by other courts pursuant to a similarly worded provision (*Simon FCA* at paras 20, 25*; Olumide FCA* at para 37).

[28] In the end, each case is considered on its own merits, and it is the overall analysis that matters. The proper weight to be given to any factor, including previous orders declaring a person a vexatious litigant, is something that must be decided by the judge seized of each particular request.

[29] The consequences of a vexatious litigant declaration are significant, but they should not be overstated (*Simon FCA* at para 11; *Olumide FCA* at para 27). While a declaration that a litigant is vexatious imposes restrictions on the person's access to the courts, it does not bar such person from vindicating valid claims or from accessing the courts. It only regulates such access by requiring the person to get leave from the relevant court before instituting new proceedings or continuing existing ones (*Olumide FCA* at para 27; *Mahoney v Canada*, 2020 FC 975 at paras 10–12). Pursuant to subsection 40(4) of the Act, this Court may grant leave to a declared vexatious litigant if it is satisfied that the proceeding filed is not an abuse of process and lies on reasonable grounds.

[30] Additionally, the FCA has underscored the importance of distinguishing a vexatious litigant from "the needy, persistent self-represented litigant" (*Canada (Attorney General) v Fabrikant*, 2019 FCA 198 at para 20; *Simon FCA* at paras 13–16). Not every self-represented litigant requires additional regulation to control his or her dealings with the system of justice, but some can be either ungovernable or harmful, and must thus be controlled for reasons of practicality (*Simon FCA* at paras 14–16). In the case at bar, there is no need for this Court to distinguish between these two types of litigants: Mr. Simon might be self-represented but, for the reasons detailed below, his profile and behaviour bear most of the hallmarks of vexatiousness.

[31] It is the AGC's responsibility in this case to prove the vexatiousness of Mr. Simon on a balance of probabilities. However, as explained by the FCA in *Olumide FCA*, "as a practical matter, due to the weight that can attach to other courts' findings, a respondent might have to offer highly credible evidence in order to resist the application" when vexatious litigant declarations have already been made in other jurisdictions (*Olumide* FCA at para 38). Moreover, it is not necessary for the Court to conduct an extensive assessment before invoking the powers provided by section 40. Instead, the Court may summarize the most relevant facts. Similarly, the party requesting an order under section 40 need not provide "an encyclopedia of every last detail about the litigant's litigation history" and can instead focus on well-chosen evidence (*Olumide FCA* at paras 36, 40).

B. ***Application to this case***

[32] Further to my review of the evidence on the record and to my consideration of the parties' written and oral submissions, I am satisfied that the AGC has established a number of

indicia of vexatiousness in Mr. Simon's behaviour. More specifically, I agree that Mr. Simon makes repeated, unsubstantiated allegations of impropriety and conspiracy in his proceedings, that he wastes judicial resources by attempting to re-litigate matters even when they have been decided, and that he disregards existing orders and decisions of the courts. The long list of proceedings initiated by Mr. Simon demonstrates that he repeatedly makes the same unsubstantiated allegations and mischaracterization of the facts, requiring opposing counsel and the courts to expend resources to assess and respond to his arguments. His unsupported, convoluted and confusing allegations made in response to the AGC's Vexatious Litigant Motion in this case added to the already significant amount of time that was required to review the record. In sum, to echo the words of the FCA, Mr. Simon's "ungovernability and harmfulness to the court system and its participants" justify a leave-granting process for any new proceedings in this Court (*Simon FCA* at paras 18, 25).

(1) **Volume of proceedings**

[33] I first observe that the sheer volume of proceedings initiated by Mr. Simon in this Court and other Canadian courts is a clear indicator of his vexatious behaviour.

[34] As detailed in Schedule A, Mr. Simon has filed in excess of 20 proceedings in several courts over the last 15 years, including actions, applications for judicial review, appeals, applications for leave to the Supreme Court of Canada, and irrelevant and unmeritorious constitutional questions (*Simon FCA* at para 23). Since 2007, all these matters stemmed from the same two related issues: his immigration sponsorship debt accrued with the sponsorship of his first wife, and the rejection of his subsequent immigration sponsorship application of his new

wife and her son in 2007. I am satisfied that this extensive volume of proceedings emanating from the same underlying set of facts is an indicia of vexatious behaviour.

(2) **Frivolous nature of proceedings and abusive behaviour**

[35] Second, Mr. Simon's previous and current legal proceedings have been deemed meritless by the courts on numerous occasions. Over a period of 15 years, the Canadian courts (involving over 20 different judges) have repeatedly found that Mr. Simon's proceedings disclosed no cause of action, sought relief to which he was not entitled and led to lengthy and resource-intensive legal battles. Because of these proceedings, Mr. Simon has been recognized as a vexatious litigant by no less than three courts, including the FCA.

[36] I find that, in numerous prior cases before this Court, Mr. Simon's behaviour demonstrated various hallmarks of vexatiousness (*Simon v Canada*, 2007 FC 1155; *Simon v Canada*, 2011 FC 582 [*Simon FC 2011*]; *Simon v Canada*, 2016 FC 976 [*Simon FC 2016*]; *Zoltan Andrew Simon v Attorney General of Canada*, 2018 FC 387 [*Simon FC 2018*]). Indeed, half a dozen different judges of this Court have come to similar conclusions regarding Mr. Simon's actions and application, as his proceedings were struck out by the Court at a preliminary stage on no less than six occasions on the basis that they were scandalous, vexatious and an abuse of process, or disclosed no reasonable cause of action (see *Simon FC 2016* at para 29 and *Simon FC 2018* at pp 6–7). For example, this Court has stated that Mr. Simon's materials are "lengthy and incomprehensible" (*Simon FC 2011* at para 10); that they do "not disclose a reasonable cause of action" (*Simon FC 2011* at paras 10, 14); or that they are "so unintelligible

and devoid of material facts that it is difficult, if not impossible, for the Defendants to understand the case to be met" (*Simon FC 2016* at para 32).

[37] These statements are of great relevance, as a litigant's prior judicial history before a court can be taken into account when considering granting relief under section 40 of the Act. Indeed, this prior judicial history can be evidence that the litigant's behaviour will "likely…recur in multiple proceedings" before the court, thus justifying a vexatious litigant declaration (*Canada v Klippenstein*, 2017 FCA 115 at para 4; *Olumide FCA* at para 24).

[38] The same type of comments were also made by the courts in British Columbia, where Mr. Simon's pleadings were described as "prolix and convoluted" (*Simon v Canada (Attorney General)*, 2015 BCSC 294 at para 26 [*Simon BC 2015*]) and were found to be frivolous, vexatious and scandalous (*Simon BC 2015* at para 100). Mr. Simon's proceedings were described as hopeless and incomprehensible submissions, and the Supreme Court of British Columbia determined that Mr. Simon was incapable of composing proper pleadings (*Simon BC 2015* at para 115). Similar conclusions were later reached by the courts in British Columbia and in Alberta between 2017 and 2019 (see *Simon BC*; *Simon v Canada (Attorney General)*, 2019 ABQB 750 and *Simon Alberta*).

[39] The Canadian courts further determined that Mr. Simon was bringing collateral attacks on previous court decisions by multiplying recourses in this Court and before the courts in British Columbia, to challenge decisions that had been made in other jurisdictions (see, for example, *Simon BC 2015* at paras 11, 108).

[40] In fact, except for the proceedings that he himself discontinued, Mr. Simon has been unsuccessful in virtually all his proceedings, and he has been admonished by the courts time and again for introducing frivolous proceedings characterized as scandalous, vexatious and abuses of process.

(3) **Re-litigating and repeating the same recourses**

[41] Third, the record before me amply demonstrates that Mr. Simon adopts a pattern of repeating the same grounds and issues from one proceeding to the other, making submissions that restate, muddy and complicate matters unnecessarily. Mr. Simon routinely seeks re-litigation of the same unsubstantiated and speculative allegations regarding the treatment of his immigration sponsorship debt and the rejection of his second immigration sponsorship application.

[42] For some 15 years now, Mr. Simon has simply refused to accept the finality of unfavourable decisions. He raises the same or similar complaints and submissions before the courts regarding the alleged wrongdoings of the Canadian immigration authorities, the provision of social assistance benefits to his first wife, the allegedly inadequate consideration of his second immigration sponsorship application, and the erratic behaviour of various government officials, government lawyers and court registry staff. Clearly, Mr. Simon is not able to take no for an answer. He keeps arguing the same things because he is not satisfied with the outcome of the decisions rendered by the courts, even though the courts keep restating the same observations about the lack of merits and substance of Mr. Simon’s proceedings.

[43] Mr. Simon's incontinent propensity to re-litigate and to bring collateral attacks on previous judicial decisions was noted by this Court in *Simon FC 2016* at paragraph 29 and in *Simon FC 2018* at paragraphs 6–8. Moreover, Mr. Simon repeatedly claims that every single judge having ruled on his claims was wrong in his or her decision.

[44] Despite multiple judgments rendered by this Court, the FCA and the courts in Alberta and British Columbia that have all rejected Mr. Simon's claims, nothing has stopped him. On the contrary, over time, things have continued to escalate. Mr. Simon persists in restating the same issues in successive proceedings, always looking for the same result, despite his repeated failures. He interprets the dismissal of his proceedings by the courts as confirmation that justice has still not been served. Moreover, he presents arguments that border on the irrational, sprinkled with conspiracy theories and accusations made against government officials and court registry staff.

[45] I must further underline that, in the lengthy affidavit and motion materials he submitted in Court file no. T-881-21 and which were transferred to this application, Mr. Simon provides an eloquent illustration of his insatiable habit of re-litigating and repeating his ill-founded claims and submissions. In his affidavit, Mr. Simon once again revisited all his proceedings since 2007, raising a litany of complaints against each of the previous adverse judicial decisions he has unsuccessfully challenged, and brandishing his conspiracy theory. He continues to assert bad faith and ill intent against a vast array of individuals, including court registry staff, government lawyers, and government officials. He further brought a notice of several constitutional questions regarding various immigration provisions, and raised some 25 questions for determination

covering a flock of disparate issues such as the Rules, the Supreme Court of Canada registry staff and aspects of the Canadian immigration regime.

[46] This culminated at the hearing before this Court when Mr. Simon candidly admitted that even a vexatious litigant order by this Court would not stop him and that, if subject to access restrictions in this Court, he would simply initiate new recourses in other Canadian jurisdictions where he is not yet subject to any measures. This express admission of his intention to continue his vexatious behaviour throughout the Canadian justice system, voiced by Mr. Simon himself, simply confirms that, despite any suggestions to the contrary, Mr. Simon is in fact ungovernable.

[47] I must add that it was pretty disconcerting to hear, in the context of this hearing on his vexatious behaviour, that Mr. Simon himself vows to continue acting as he does, no matter what the Court says. Unfortunately, I must conclude that Mr. Simon's behaviour in the context of this application simply suggests that there is no end in sight.

[48] The picture that emerges from all this is that Mr. Simon is a litigant who does not ever intend to change his behaviour unless he is disciplined by the courts. Mr. Simon's unrelenting persistence at re-litigating issues that have been previously dismissed by other courts are clearly hallmarks of vexatiousness (*Olumide FC* at para 10; *Feeney v Canada*, 2021 FC 1213 at para 15).

(4) **Automatic appeals**

[49] Fourth, Mr. Simon has routinely sought to appeal unfavourable decisions as a matter of course (*Simon FCA* at para 23). On five occasions, he has also sought leave to appeal an adverse decision to the Supreme Court of Canada, where he has always been unsuccessful. Again, as observed by the Alberta Court of Queen's Bench, this inclination to file unsuccessful appeals of trial decisions is another reflection of the fact that Mr. Simon is a litigant "who clearly refuses to take no for an answer" (*Simon Alberta* at para 52).

(5) **Previous vexatious litigant declarations**

[50] Finally, and this is a certainly a major factor in this case, Mr. Simon has already been recognized as a vexatious litigant by no less than three courts, including the FCA. This is far from being common. Mr. Simon is now subject to court access restrictions in the FCA as well as in all courts in each of British Columbia and Alberta (*Simon FCA* at para 30; *Simon BC* at para 66; *Simon Alberta* at para 28).

[51] These three vexatious litigant declarations, which are all supported by detailed and compelling reasons, deserve significant weight as they are based on the same facts underlying the AGC's request in this application (*Simon FCA* at para 25). Moreover, much weight must specifically be given to the FCA decision in *Simon FCA*, as the FCA is also governed by section 40 of the Act.

[52] Mr. Simon now claims that these three vexatious litigant orders were made without jurisdiction and against the law. This statement is preposterous and is totally without merit. I can find no basis whatsoever to support such a position which aims to gratuitously denigrate and ignore valid and well-reasoned decisions issued by three different courts in Canada.

(6) **Final observations**

[53] Having regard to the foregoing, and based on the evidence on record, I am satisfied that Mr. Simon "has persistently instituted proceedings or has conducted a proceeding in a vexatious manner" (as stated in subsection 40(1) of the Act) in this Court, and before other courts. To echo what Justice Lafrenière said in *Canada (Attorney General) v Yodjeu*, 2019 FC 1108 at paragraph 30, "enough is enough," and the time has come to intervene, to supervise and restrict Mr. Simon's right to instigate legal proceedings and to stop Mr. Simon's excesses in this Court.

[54] Over the years, Mr. Simon's actions have resulted in the squandering of this Court's resources, not to mention those of the AGC. I am satisfied that he is effectively ungovernable, as this term is used in *Olumide FCA,* and that his behaviour reflects a level of ungovernability and harmfulness to the court system and its participants that justifies regulating his future actions before the Court in the manner contemplated by subsection 40(1) of the Act (*Simon FCA* at paras 14–18). The additional layer of regulation imposed on vexatious litigants by section 40 of the Act is necessary to prevent Mr. Simon from causing further waste of the Court's and parties' time, to ensure that Mr. Simon's involvement in files is governable, and to allow the Court to regulate his use of judicial resources. Indeed, Mr. Simon exhibits most, though perhaps not all, of the hallmarks associated with vexatious litigants.

[55] At present day, Mr. Simon has been undeterred by numerous unfavourable judgments, warnings by the Court, and cost consequences. Consequently, I consider it appropriate to order that no further proceedings be instituted in this Court by Mr. Simon, except by leave of this Court. For greater certainty, Mr. Simon will be prohibited from filing any document or procedure, either in his own name or through a representative, except by leave of the Court.

C. ***Mr. Simon's arguments***

[56] Before concluding, and for the sake of completeness, I want to address briefly some of the arguments raised by Mr. Simon against the AGC's request in his motion materials and in his affidavit.

[57] First, Mr. Simon argued that the AGC's request is an abuse of process, as it is filled with untruth and aims at misleading the Court. Mr. Simon submits that the AGC has filed documentation that is unnecessarily long and encyclopedic in scope (covering elements such as Mr. Simon's background information, his past pleadings, or affidavit evidence accumulated in various court hearings in British Columbia and Alberta during the last two decades). To Mr. Simon, this material is irrelevant and not in the interest of justice as it does not facilitate the Court's work and diverts the Court's attention from the legal challenge of this case. Additionally, Mr. Simon believes that the Vexatious Litigant Motion is ill supported by the AGC's arguments. Indeed, to Mr. Simon's eyes, the AGC makes bare assertions and misleading statements about the validity of his claims. He argues that the AGC simply relies on the fact that he has been declared a vexatious litigant by three other courts, which should not be enough to equate that his actions and applications are unfounded.

[58] I am not persuaded by Mr. Simon's arguments. As discussed in detail above, the evidence supporting the AGC's request is overwhelming and has been the subject of several court decisions which have all reached a similar conclusion regarding Mr. Simon's behaviour. Furthermore, the vexatious litigant declarations already limiting Mr. Simon's access to the FCA and to the courts in British Columbia and Alberta are certainly highly relevant to the AGC's request in this case.

[59] Second, Mr. Simon argues that the AGC's request has put him in an impossible position, given that the AGC is asking him to prove the non-existence of his vexatiousness. Mr. Simon relies on *Agence du revenu du Québec v Small*, 2016 QCCA 632 at paragraph 84, to argue that the request to prove the non-existence of his vexatiousness is impractical and unfair. I am not convinced by this argument. Of note, the particular paragraph of the QCCA decision cited by Mr. Simon is not about a vexatious litigant declaration. It is rather about the potential impracticality and unfairness of asking a party to prove the non-existence of heirs beyond the filing of acts of death of persons.

[60] Third, Mr. Simon claims that the AGC's request is vitiated, as AGC's counsel failed to secure the signature of the Attorney General of Canada himself, the Honourable David Lametti. Subsection 40(2) of the Act requires the consent of the AGC and, in this case, this consent was provided on August 18, 2021 by Ms. Sharon Lovett, in her capacity as Assistant Deputy Attorney General of Canada. Mr. Simon claims that the consent requirement of subsection 40(2) cannot be fulfilled by a representative of the AGC. Mr. Simon relies on the presence of the words "only with the consent of the Attorney General of Canada" [emphasis added] in

subsection 40(2) to support his position. With respect, this argument is without merit. Suffice it to say that this Court has already ruled that the consent requirement under subsection 40(2) can be given by the Assistant Deputy Attorney General of Canada (*Lawyers' Professional Indemnity Company v Coote*, 2013 FC 643 at para 10).

[61] Fourth, Mr. Simon complains about what he qualifies as the procedural unfairness of the AGC's request, and claims that he did not have the materials and the proper opportunity to defend against the AGC's claims of vexatiousness. As I indicated at the hearing, I strongly disagree and instead find that the process followed by the Court in this case was eminently fair.

[62] The Vexatious Litigant Motion filed by the AGC was extremely detailed and Mr. Simon himself even qualified it as an "encyclopedic" review of the litigation history between him and the Canadian government regarding his challenges of his immigration sponsorship debt and the refusal of his immigration sponsorship application. In his motion materials, the AGC clearly identified all arguments and all the evidence that specifically related to his vexatious litigant claim. I have no hesitation to conclude that Mr. Simon cannot reasonably claim that he had no idea about the AGC's vexatious litigant allegations or that he did not know the case he had to meet.

[63] Furthermore, Mr. Simon was given ample opportunities to make detailed submissions to the Court on the AGC's claim and to respond to every concern raised by the AGC, and he availed himself of those opportunities. First, Mr. Simon filed an extensive motion record in response to the AGC's Motion to Strike and Vexatious Litigant Motion, exceeding 1500 pages.

Second, in order precisely to avoid any procedural unfairness, the Court agreed to hold an oral hearing on the AGC's request and allowed Mr. Simon to file additional evidence and submissions on the vexatious litigant issue. Again, Mr. Simon effectively used that opportunity and filed a detailed affidavit supported by ample materials, in which he articulated at length his arguments, concerns and evidence to oppose the AGC's request.

[64] Finally, Mr. Simon had the benefit of an oral hearing on January 6, 2022, where he was able to present his arguments and submissions to the Court on the vexatious litigant claims made by the AGC.

[65] In light of the foregoing, I can only conclude that, in every respect, the process followed by the Court was procedurally fair and that Mr. Simon cannot complain of any breach of procedural fairness in this matter.

[66] Fifth, Mr. Simon complains that he never received a "final judgment" from this Court or from other courts, and that he was never heard regarding the real issues raised by his immigration sponsorship debt and the refusal of his second immigration sponsorship application. With respect, I am again not persuaded by Mr. Simon's complaint on this front.

[67] The fact that the courts may not have ruled on the merits of Mr. Simon's claims as he presented them does not mean that Mr. Simon was not properly heard or that no final decision has been issued on the rights of the parties involved. Most of Mr. Simon's actions or applications were dismissed at an early stage and struck out because they were not meeting some basic,

fundamental requirements established by the rules of procedure. These rules exist to filter out claims that are clearly meritless, and this is what the various courts have concluded with respect to most of Mr. Simon's actions and applications. Mr. Simon was simply unable to convince the courts that he had a valid cause of action to be considered on the merits.

IV. Conclusion

[68] For the above detailed reasons, Mr. Simon is declared a vexatious litigant in this Court. He has engaged in ungovernable and harmful conduct that may be observed throughout the record, notably by engaging in repeated litigation, mischaracterizing facts and making unsubstantiated allegations of impropriety, and re-litigating matters that have already been decided.

[69] The AGC proposes suitable restrictions, which I find justified, and these are reflected in the order that follows.

[70] The AGC further requests an order of costs in the lump-sum amount of $1,500, payable forthwith, for his legal fees and disbursements. Generally, costs are awarded to the successful party. Costs are in the full discretion of the Court, and governed by sections 400 to 422 of the Rules. The amount requested is modest and eminently reasonable in the circumstances, and I will therefore award costs to the AGC in the said amount of $1,500.

JUDGMENT in T-1999-21

THIS COURT'S JUDGMENT is that:

1. The application is granted.
2. Mr. Zoltan Andrew Simon is declared a vexatious litigant within the meaning of section 40 of the *Federal Courts Act*.
3. Mr. Simon is prohibited from instituting new proceedings in this Court, except by leave of this Court. This includes proceedings in his own name, individually or jointly with any other person, and whether he is acting for himself or having his interests represented by another individual in this Court.
4. All proceedings instituted by Mr. Simon in this Court and currently before this Court, if any, are stayed. The stay shall not be lifted and the proceedings shall not continue unless leave is granted by this Court.
5. The Registry shall file a copy of the Court's judgment in all affected files and shall send a copy of same to the parties in those files.
6. Mr. Simon shall forthwith pay to the Attorney General of Canada costs fixed to the all-inclusive, lump-sum amount of $1,500.
7. The style of cause is modified to remove the names of ZuanHao Zhong and Jian Feng as Defendants.

"Denis Gascon"

Judge

SCHEDULE A

Federal Court

File Number	Summary	Outcome
T-1758-07 (filed 2007-10-01)	Mr. Simon commenced a simplified action against Her Majesty the Queen, and sought an order from the Court granting a Canadian visitor's visa to his wife, Ms. Zhong.	The statement of claim was struck out, as the Court (MacTavish J.) found it plain and obvious that the action could not succeed (*Simon v Canada*, 2007 FC 1155).
IMM-6265-09 (filed on 2009-11-17)	Mr. Simon appealed his sponsorship refusal to the Immigration Appeal Division [IAD]. The IAD upheld the refusal. Mr. Simon sought judicial review of the IAD decision.	The application for leave and judicial review was dismissed by an order of the Court (Martineau J.)
T-639-10 (filed on 2010-04-23)	Mr. Simon commenced an action against Her Majesty the Queen seeking a declaration that he has no "effective debt" owed in connection with his immigration sponsorship of his first wife (Ms. Reyes) and that his current wife and her son (Ms. Zhong and Mr. Ye) are entitled to visas to visit him in Canada. He was also seeking costs.	The statement of claim was struck out, as the Court (Zinn J.) found that Mr. Simon's claim does not fall within the jurisdiction of the Court, and costs were awarded to the defendant (*Simon v Canada*, 2010 FC 617). Mr. Simon's appeal of the Court decision was allowed in part by the FCA, and he was granted permission to amend his pleading (*Simon v Canada*, 2011 FCA 6). Mr. Simon amended his statement of claim, which was one again struck out by the Court (Snider J.) for not complying with the Rules (*Simon v Canada*, 2011 FC 582).

T-1029-12 (filed on 2012-05-25)	Mr. Simon commenced an action against Her Majesty the Queen in Right of Canada, the Ministry of the Attorney General, the Ministry of Human Resources and Skills Development, the Honourable Diane Finley (Minister of Human Resources and Skills Development), Sharon Shanks (Director General of the Canada Pension Plan/Old Age Security Division), Roger Bilodeau, Q.C. (Registrar of the Supreme Court of Canada), and Mary Ann Achakji (Registry Officer of the Supreme Court of Canada), as well as against the Registry of the Supreme Court of Canada and "the federal authority that approved the [Supreme Court of Canada] web site" in relation to the Supreme Court of Canada's refusal to accept for filing a notice of appeal in a proceeding Mr. Simon claimed was an appeal as of right to the Supreme Court of Canada.	The statement of claim was struck out without leave to amend by the Court (Tremblay-Lamer J.). The order concluded that the claim was deemed vexatious, was an abuse of process and disclosed no cause of action. Mr. Simon appealed the order of the Court, and the FCA dismissed the appeal in its entirety (*Simon v Canada*, 2014 FCA 47).
T-1066-16 (filed on 2016-07-05)	Mr. Simon commenced an action against Her Majesty the Queen and the Minister of Immigration, Refugees and Citizenship, again in relation to his immigration sponsorship application.	The statement of claim was struck out in its entirety by the Court (Prothonotary Aylen), as it disclosed no reasonable cause of action, was scandalous, vexatious and an abuse of process. No leave to amend was granted on the basis, *inter alia*, of Mr. Simon's past conduct in refusing to heed the direction offered by the FCA on how to prepare a proper pleading. A heightened award of costs was

		awarded to the defendants (*Simon v Canada*, 2016 FC 976).
T-2102-17 (filed on 2017-12-27)	Mr. Simon, as part of a judicial review application, sought an order and declaration that he owes no debt in connection to his first immigration sponsorship. Mr. Simon has also filed a notice of constitutional question regarding the constitutionality of the sponsorship program.	The application for leave and judicial review was struck out without leave to amend by an order of the Court (Manson J.). Mr. Simon's application was deemed an "abuse of process [that] fails to state any cognizable administrative law claim or otherwise meet the requirements set out in Rule 301" (*Zoltan Andrew Simon v Attorney General of Canada*, 2018 FC 387). Mr. Simon appealed the decision to the FCA. His appeal was dismissed, and Mr. Simon was declared a vexatious litigant in the FCA (*Simon v Canada (Attorney General)*, 2019 FCA 28).
T-881-21 (filed on 2021-06-01)	Mr. Simon commenced an action against Her Majesty the Queen, again in relation to the refusal of his immigration sponsorship application.	The action was discontinued on December 29, 2021.

Federal Court of Appeal

File Number	Summary	Outcome
A-237-10 (filed on 2010-06-16)	Mr. Simon appealed a decision of the Court that struck out his statement of claim on the basis that the Court had no jurisdiction to try his claim (*Simon v Canada*, 2010 FC 617).	The appeal was allowed in part, and Mr. Simon was authorized to amend his pleading (*Simon v Canada*, 2011 FCA 6).
A-232-11 (filed on 2011-06-17)	Mr. Simon appealed an order of the Court that dismissed his amended statement of claim (*Simon v Canada*, 2011 FC 582).	The appeal was dismissed in its entirety (*Simon v Canada*, 2012 FCA 49). Mr. Simon unsuccessfully sought leave to appeal the decision to the Supreme Court of Canada (*Simon v Canada*, [2012] SCCA No 199).
A-367-12 (filed on 2012-08-16)	Mr. Simon appealed an order of the Court that dismissed his claim for damages and declaratory relief against a number of federal entities and offices (T-1029-12). He further asserted that the Court judge was biased in rendering her decision.	The appeal was dismissed in its entirety (*Simon v Canada*, 2014 FCA 47). Mr. Simon unsuccessfully sought leave to appeal the decision to the Supreme Court of Canada (*Zoltan Andrew Simon v Her Majesty the Queen*, 35995).
17-A-3 (filed on February 27, 2017)	Mr. Simon attempted to appeal the order of the Court in file T-1066-16.	The FCA denied Mr. Simon's motion for en extension of time to file an appeal.
A-123-18 (filed on 2018-04-23)	Mr. Simon appealed a Court decision dismissing his judicial review application (*Zoltan Andrew Simon v Attorney General of Canada*, 2018 FC 387)	The FCA dismissed the appeal, and issued an order declaring Mr. Simon a vexatious litigant (*Simon v Canada (Attorney General)*, 2019 FCA 28).

19-A-62 (filed on 2019-10-04)	Mr. Simon sought leave to appeal a decision of the Tax Court of Canada (2018-908(IT)I).	The FCA dismissed the appeal. Mr. Simon unsuccessfully sought leave to appeal the decision to the Supreme Court of Canada (*Zoltan Andrew Simon v Attorney General of Canada (representing the Minister of National Revenue, both in their representative capacity)*, 39294).

Tax Court

File Number	Summary	Outcome
2018-908(IT)I	Mr. Simon appealed to the Tax Court for the assessment and reassessment of his personal tax return for the 2007 taxation year. The reassessment was linked to his immigration sponsorship debt. Mr. Simon contended that tax credits had not been properly sent to him.	Mr. Simon's notice of appeal was dismissed and struck out entirely, without leave to amend, as it raised no reasonable grounds for appeal.

Supreme Court of British Columbia

File Number	Summary	Outcome
097926 (filed on 2009-10-29)	Mr. Simon commenced an action against Her Majesty the Queen and the province of British Columbia, in relation to his immigration sponsorship applications.	The action was discontinued.
4756 (filed on 2014-05-23)	Mr. Simon and Ms. Zhong commenced an action against Her Majesty the Queen and the province of British	The notice of claim was struck out in its entirety without leave to amend (*Simon v*

	Columbia, in relation to the refusal of his immigration sponsorship application. The defendants brought an application to have the notice of claim struck out.	*Canada (Attorney General)*, 2015 BCSC 924). Mr. Simon's subsequent application to the British Columbia Court of Appeal was dismissed (*Simon v British Columbia (Attorney General)*, 2016 BCCA 52).
5675 (filed on 2017-04-26)	Mr. Simon, Ms. Zhong and Mr. Ye commenced an action against Her Majesty the Queen and the province of British Columbia, in relation to the refusal of his immigration sponsorship application The defendants brought an application to have the notice of claim struck out.	The notice of claim was struck out in its entirety without leave to amend (*Simon v Canada (Attorney General)*, 2017 BCSC 1438). In that decision, Mr. Simon was also declared a vexatious litigant in the courts of British Columbia. Mr. Simon's subsequent applications to the British Columbia Court of Appeal (*Simon v Canada (Attorney General)*, 2018 BCCA 54 (application for an order extending the time to file and serve his notice of appeal); *Simon v Canada (Attorney General)*, 2018 BCCA 461 (application to vary the previous order) were dismissed.

Provincial Court of British Columbia

File Number	Summary	Outcome
090244 (filed on 2009-03-11)	Mr. Simon commenced an action for damages against a lawyer for the Attorney General of British Columbia arising from communications regarding the collection and	The claim was dismissed.

	possible settlement of his sponsorship debt.	

Alberta Court of Queen's Bench

File Number	Summary	Outcome
1910 00986 (filed on 2019-08-27)	Mr. Simon commenced an action against Her Majesty the Queen, which rested on numerous causes of action ranging from tort law, debt recovery rights, and Charter rights arising from his failed immigration sponsorship application. Upon receiving Mr. Simon's application, the Court reviewed his statement of claim as a potential Apparently Vexatious Application or Proceeding [AVAP] under the two-stepped process provided by the *Civil Practice Note* No. 7 to determine whether a person ought to be subject to ongoing and indefinite court access restrictions.	In a first decision, the Alberta Court of Queen's Bench determined that the Statement of Claim appeared frivolous, vexatious or otherwise an abuse of process. It stayed the action, and gave Mr. Simon a delay to file written submissions on whether the Statement of Claim should be struck out in whole or in part (*Simon v Canada (Attorney General)*, 2019 ABQB 750). In a second decision, the Alberta Court of Queen's Bench struck out Mr. Simon's Statement of Claim, and gave a delay for the parties to file written submissions on whether Mr. Simon should be subject to court access restrictions in the Alberta Courts. The court set out interim court access restrictions for Mr. Simon (*Simon v Canada (Attorney General)*, 2019 ABQB 824). In a third decision, the court determined that Mr. Simon was a vexatious litigant (*Simon v Canada (Attorney General)*, 2019 ABQB 947).

Court of Appeal of Alberta

File Number	Summary	Outcome
1901-0370-AC	Mr. Simon sought leave to appeal the second decision of the Alberta Court of Queen's Bench to the Court of Appeal of Alberta (*Simon v Canada (Attorney General)*, 2019 ABQB 824).	Mr. Simon's application was denied (*Simon v Attorney General of Canada*, 2019 ABCA 498). Mr. Simon unsuccessfully sought leave to appeal the decision to the Supreme Court of Canada (*Zoltan Andrew Simon v Attorney General of Canada, Representing Her Majesty the Queen in Right of Canada*, 39295).

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1999-21
STYLE OF CAUSE:	HER MAJESTY THE QUEEN (IN RIGHT OF CANADA) AS REPRESENTED BY THE ATTORNEY GENERAL OF CANADA v ZOLTAN ANDREW SIMON
PLACE OF HEARING:	HELD BY VIDEOCONFERENCE
DATE OF HEARING:	JANUARY 6, 2022
JUDGMENT AND REASONS:	GASCON J.
DATED:	JULY 28, 2022

APPEARANCES:

Mr. Keelan Sinnott Attorney General of Canada	FOR THE PLAINTIFF
Zoltan Andrew Simon	FOR THE DEFENDANT (ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

Attorney General of Canada Edmonton, Alberta	FOR THE PLAINTIFF