

Federal Court



Cour fédérale

Court Date: 20220923

Docket: T-325-22

Citation: 2022 FC 1328

Toronto, Ontario, September 23, 2022

PRESENT: Mr. Justice Diner

BETWEEN:

**MR. RICHARD S. MITCHELL AKA
DR. RICHARD STEVE MITCHELL,
REV. RICHARD MITCHELL, AND
RICHARD STEVEN MITCHELL**

Plaintiff

and

**ACADEMY OF LEARNING MISSISSAUGA
– CAMPUS AND HIS MAJESTY THE KING
IN RIGHT OF ONTARIO**

Defendants

ORDER AND REASONS

[1] The Academy of Learning Mississauga Campus (“AOL”) has brought a motion for an Order declaring the Plaintiff (“Mr. Mitchell”) to be a vexatious litigant. I will grant the Order, for the following reasons.

I. Background

[2] In 2021, Mr. Mitchell sued AOL in the Ontario Superior Court of Justice (“ONSC”) seeking \$150,000.00 in damages after AOL removed him from its immigration paralegal course due to a failure to pay the requisite tuition fees. Justice Bird dismissed the action on the basis of it being frivolous, vexatious or otherwise an abuse of the process of the court, pursuant to Rule 2.1.01 of the *Rules of Civil Procedure*, RRO 1990, Reg 194 (*Mitchell v Academy of Learning*, 2021 ONSC 7106 [*Mitchell ONSC*]).

[3] Mr. Mitchell appealed Justice Bird’s decision to the Ontario Court of Appeal (“ONCA”). The appeal was dismissed for delay on February 1, 2022.

[4] On February 22, 2022, Mr. Mitchell filed a statement of claim (“Claim”) in the Federal Court against AOL and Her Majesty the Queen in Right of Ontario (“Ontario”). In this Claim, Mr. Mitchell alleged conspiracy and fraud on the part of AOL, the court staff and the judiciary of the Ontario Courts. Prothonotary Trent Horne was assigned to the matter as Case Management Judge (“CMJ”).

[5] On March 9, 2022, all parties attended a case management conference, following which the CMJ issued an Oral Direction regarding the Defendant’s motion to strike out the Claim. The Direction required AOL and Ontario to bring their motion in writing, serve and file their motion materials by March 25, 2022, and Mr. Mitchell to serve and file his responding materials by April 6, 2022.

[6] Concurrently with the motion to strike the Claim, AOL brought a request to declare the Plaintiff a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, RSC 1985, c F-7 (“*Act*”), but did not include in the motion record any evidence of consent from the Attorney General of Canada (“AGC”), which is required by subsection 40(2) of the *Act*. Counsel for AOL wrote to the Court on March 29, 2022 and requested a case management conference to receive directions with respect to amending its motion materials.

[7] At the April 21, 2022 case management conference, AOL withdrew the section 40 request “without prejudice to renewing the request once the consent of the AGC is in hand” (*Mitchell v Academy of Learning Mississauga*, 2022 FC 607 at para 18 [*Mitchell FC*]).

[8] On April 26, 2022, upon reviewing the materials submitted by AOL and Ontario, and in the absence of any materials filed by Mr. Mitchell, the CMJ issued a decision granting the Defendants’ motion to strike the Claim (*Mitchell FC* at para 54).

[9] On July 19, 2022, this time with the previously-absent written consent of the AGC, AOL once again brought its Notice of motion before the CMJ to have Mr. Mitchell declared a vexatious litigant. The motion was reassigned to me because the *Act* is unclear as to whether a Prothonotary has the authority to issue a vexatious litigant order.

[10] Since Mr. Mitchell had not made any written submissions in response to the section 40 request, I asked the Registry to convoke a hearing so that Mr. Mitchell would have the opportunity to provide oral submissions in response. When the Registry reached out to

Mr. Mitchell in the absence of any reply to my Direction, Mr. Mitchell stated that he had received notice of the motion but did not intend to reply, stating that the way the proceeding was being handled by this Court was a “criminal activity”, and that he had filed a second appeal at the Supreme Court of Canada (“SCC”).

[11] Mr. Mitchell ultimately changed his mind, subsequently advising that he would indeed appear at the hearing, which was held on the morning of September 8, 2022, and which Mr. Mitchell and counsel for both Defendants attended. Since the parties did not raise any arguments with regard to whether a Prothonotary can issue a section 40 Order, and that issue is not dispositive in my decision, I will leave it to another day.

II. Parties’ positions

[12] AOL is requesting that Mr. Mitchell be declared a vexatious litigant under section 40 of the *Act*, such that no further proceeding be instituted, and no existing proceeding be continued by Mr. Mitchell in the Federal Court, except by leave of the Court.

[13] First, AOL submits that Mr. Mitchell has instituted multiple vexatious proceedings in the Ontario Courts, including before the ONSC and the ONCA. AOL argues that most of these Ontario-based claims have been found by the courts to be frivolous, vexatious, or otherwise an abuse of process of the court, and have been dismissed.

[14] Second, AOL points out that Mr. Mitchell has also instituted multiple proceedings in the Federal Court and the Federal Court of Appeal (“FCA”), often trying to appeal or relitigate the

Orders made by the ONSC and ONCA, with allegations including conspiracy and fraud on the court staff and/or the judiciary of the Ontario courts.

[15] Third, AOL highlights that Mr. Mitchell has twice unsuccessfully tried to appeal these Federal Court proceedings to the SCC without any jurisdiction to do so, as he lacked any ground for an appeal.

[16] Fourth, AOL notes that Mr. Mitchell, quite apart from wasting the resources of the judiciary and of the parties he continues to sue, has not paid any cost awards that have been ordered in the current proceedings, namely \$1,600.00 awarded to each of the two Defendants.

[17] While Mr. Mitchell did not file any written submissions in this section 40 motion, he made the following points in his oral representations at the hearing.

[18] First, Mr. Mitchell explained that he did not file a response to the Defendant's motion and did not attend the second case management conference because he believes the CMJ breached the *Federal Court Rules*, SOR /98-106 ("*Rules*") and engaged in criminal behaviour. Specifically, Mr. Mitchell alleged that during the first case management conference, the CMJ "coached" AOL's lawyer to make a section 40 request, reflecting what he claimed to be corruption and bias. As a result, Mr. Mitchell refused to further engage in the proceedings before this Court and chose to appeal the CMJ's Directions and subsequent Decision in *Mitchell FC* to the FCA and the SCC. Mr. Mitchell reiterated at the section 40 hearing, that he believes the CMJ is biased against self-represented litigants.

[19] Second, Mr. Mitchell objected to AOL referring to his litigation history in the Ontario courts. He argued that these past proceedings are irrelevant to the current case before the Federal Court, and that this Court should not consider them when making its section 40 determination.

[20] Third, Mr. Mitchell claimed that any costs awarded to AOL and Ontario in this proceeding are not payable until his appeals to the FCA and SCC have been finally decided. Mr. Mitchell informed this Court that he has not received any response from the FCA to the notice of appeal he filed and served on both Defendants.

[21] Ontario did not provide written submissions as to its position on this vexatious litigant motion. At the section 40 hearing, Counsel for Ontario explained that pursuant to Rule 208 of the *Rules*, Ontario did not attorn to the jurisdiction of this Court when it provided representations in the strike motion of April, 2022, given that it argued that this Court lacked jurisdiction to hear the action. The CMJ indeed found a lack of jurisdiction to hear Mr. Mitchell's claim (*Mitchell FC* at para 1). Having not made any formal submissions in the present motion, counsel for Ontario nonetheless stated at the hearing that as a co-Defendant, it did not object to the arguments, observation, and position on section 40 being taken by AOL in this motion.

III. Analysis

A. *The Law*

[22] A litigant's right to access the courts is not without limits (*Canada (Attorney General) v Simon*, 2022 FC 1135 at para 22 [*Simon FC*]). When a litigant's continued unrestricted access to

the Court undermines the community's access, the purpose of section 40 of the *Act* is to give the Court control over its own process, protect the integrity and fairness of the legal system, and prevent the use of Court time and resources for improper purposes.

[23] Section 40 thus highlights the importance of the Federal Court as a “community property” with finite resources that cannot be squandered on vexatious litigants (*Canada v Olumide*, 2017 FCA 42 at paras 17–19 [*Olumide*]). The relevant parts of the provision read 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.

(2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).

40. (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.

(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.

[24] Section 40 does not define when a litigant is “vexatious.” The Court explained in *Olumide* at para 32 that “vexatiousness comes in all shapes and sizes”, and went on to give a few examples of what could be vexatious for the purposes of section 40:

Sometimes it is the number of meritless proceedings and motions or 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.

[25] In *Canada (Attorney General) v Yodjeu*, 2019 FCA 178 at para 18, cited very recently by Justice Little in *National Bank of Canada v Taha*, 2022 FC 1282 at para 36 [*Taha*], Justice de Montigny provided the following indicia for vexatiousness:

... filing frivolous and inconsistent proceedings, seeking relief or remedies outside the jurisdiction of this Court, making unfounded allegations of improper conduct against the opposing party, that party’s solicitors and the Court, failing to meet the deadlines and comply with the rules of the Courts, raising again questions that have already been decided, and non-payment of costs awarded against them.

[26] Ultimately, where the Court is satisfied that the continued unrestricted access of a litigant to the Court undermines the purposes of section 40, including the protection of scarce judicial resources and innocent parties, the relief contained in that provision should be granted (*Olumide* at para 31; *Canada (Attorney General) v Fabrikant*, 2019 FCA 198 at para 19 [*Fabrikant*]; *Simon v Canada (Attorney General)*, 2019 FCA 28 at paras 9-10 [*Simon FCA*]; *Canada (Attorney General) v Ubah*, 2021 FC 1466 at para 43; *Taha* at para 37).

[27] It is also important to distinguish between a vexatious litigant on the one hand and a “needy, persistent self represented litigant” on the other (*Simon FC* at para 30; *Simon FCA* at paras 13-16; *Fabrikant* at para 20). Ungovernable litigants ignore the rules, do not respond to attention and assistance the courts give them, disregard court orders, and persist in litigation doomed to fail. Harmful litigants force opposing parties to defend themselves against meritless claims, drain the finite resources of the court by the sheer volume of litigation or the manner of litigation, including their intentions and attitudes during litigation (*Simon FCA* at paras 14-15). Faced with an ungovernable and harmful litigant, there comes a certain point when “enough is enough and practicality must prevail”, such that the extra layer of regulation as achieved through a vexatious litigant declaration becomes necessary, just and responsible (see *Simon FCA* at para 16).

[28] It is unnecessary for the party requesting a section 40 Order to provide an encyclopedic history of the litigant’s history with the courts. As the FCA recently reaffirmed in *Coote v Canada (Human Rights Commission)*, 2021 FCA 150 at para 20 [*Coote*], not much evidence needs to be filed to support a finding of vexatiousness under the *Olumide* test for vexatiousness.

B. *Applying the Law to Mr. Mitchell’s conduct*

[29] Here, I find that AOL has met its burden of proving the vexatiousness of Mr. Mitchell on a balance of probabilities. His litigation history demonstrates a clear and persistent pattern in pursuing unsubstantiated claims that have been doomed to fail from the outset.

[30] Both of Mr. Mitchell's claims at the Federal Court were struck for being frivolous and vexatious, or because it was plain and obvious that they did not disclose a reasonable cause of action (see: T-146-17 and *Mitchell FC*).

[31] Similarly, five of Mr. Mitchell's past proceedings at the ONSC were dismissed as frivolous, vexatious and/or an abuse of process (see 2014 ONSC 5106, 2015 ONSC 2926, 2016 ONSC 6649, 2020 ONSC 4135 and 2020 ONSC 5135).

[32] In sum, Mr. Mitchell has shown a pattern of attempting to relitigate past decisions by appealing his actions to higher courts (often without grounds to do so), and supplementing his claims with allegations of conspiracy or fraud on the part of past decision-makers, including members of the judiciary and court administration. Mr. Mitchell's attempts to escalate actions have also been replete with abject disregard for the directions and processes provided by the courts and their registries, including compliance with deadlines, and attending court sittings in these — his own — proceedings.

[33] While it is not necessary for this Court to provide a comprehensive list of every instance in which Mr. Mitchell has flouted directions and orders of the courts (*Simon FC* at para 31; *Olumide* at paras 36, 40; *Coote* at para 20), his actions in the current action alone are sufficient to demonstrate his vexatious manner of litigation. I will point to three specific instances.

[34] First, instead of filing a written response to AOL's motion to strike his Claim, as directed by the CMJ, Mr. Mitchell chose to file notices of appeal against AOL and Ontario at the FCA,

and then twice to the SCC. These were all done contrary to the required procedures set out in the governing rules. He claimed, among other wrongs, bias and improper ‘criminal’ conduct on the part of the CMJ, without any evidence of wrongdoing or grounding in law. To the contrary, the CMJ was simply doing his job to move the proceedings along, and providing rulings responsive to the submissions and materials placed before him.

[35] Second, when Mr. Mitchell’s notice of appeal to the SCC was inevitably refused for filing by the SCC’s Registrar for failing to meet the test for an appeal as of right, he filed a second notice of appeal to the SCC. He refused to attend the case management conference on April 21, 2022 in the course of case management of his action before this Court, purportedly because he had filed an appeal in the matter.

[36] Third, at the section 40 hearing of this motion on September 8, 2022 in which, to his credit, Mr. Mitchell reversed his initial refusal and ultimately agreed to participate, he justified his actions as being motivated by a refusal to follow the directions of the CMJ, who he described as a “corrupt” and “biased” member of the judiciary, and that it would have been a waste of his valuable time to do otherwise.

[37] What Mr. Mitchell continually fails to recognize in the many proceedings that he commences, is that his refusal to abide by this Court’s process or accept the outcome of the proceedings that he himself commenced, is that his pattern of conduct, rather than that of the Court which is simply responding to his actions, wastes the time not only of the parties that he sues, but also the scarce resources of the Court and its Registry. When a decision or process does

not go Mr. Mitchell's way, he has consistently made unsubstantiated allegations of corruption and bias. His conduct in these particular proceedings echoes those of the past, which have consistently been dismissed for vexatiousness, abuse of process, or the like.

[38] His pleadings contain persistent prolix. They are extremely difficult to understand, although their castigation of judges and administrators is not. To point out some examples, in his underlying Claim (since struck), Mr. Mitchell accused Ms. Sandra Fleralde of the Office of the Registrar of ONCA, of "fraudulently creating an order Dismissing Appeal For Delay." He claims that "the unwarranted in-chamber decision Justice L. Bird, prejudice the process by totally found unfounded faults, of a proper throughout Statement of claim, incompliance (sic throughout)." He also alleges "Juridical Contempt" on the part of the Court. In an email to this Court on March 15, 2022, Mr. Mitchell notified this Court that he would appeal "against the gross errored final favored bias (Order) of Justice Prothonotary Trent Horne (sic throughout)", but did not actually attach a copy of an appeal to the email (*Mitchell FC* at paras 7-8).

[39] Mr. Mitchell, in his oral representations made during his section 40 hearing, reiterated all of these allegations regarding judicial and registry misconduct without evidence of same. On several occasions, I had to caution him to cease attempting to rehash past matters that had been finally decided at both first instance and appeal.

[40] As for his allegations of misconduct or worse, there are appropriate avenues to complain about allegations of (i) judges' and counsel's unprofessional conduct through the Canadian Judicial Council and the provincial law societies, and (ii) criminal conduct through the police.

[41] In the current action, Mr. Mitchell's refusal to follow the CMJ's directions, his baseless and personal allegations against members of the judiciary and court staff, his absence from proceedings that he himself launched (such as refusing to appear at the case management conference of April 21, 2022), and numerous futile attempts to appeal to the FCA and the SCC without jurisdiction, are indicia of vexatious behaviour. Mr. Mitchell has, over the course of the multiple steps he has taken in this case just as he has done previously in other litigation, shown that he is more than simply a needy self-represented litigant. Rather, I agree with AOL that he has crossed the line in these proceedings to being a harmful and ungovernable litigant.

[42] As a result, this Court has wasted valuable resources on Mr. Mitchell at the expense not only of the two Defendants, but indeed of the larger community of deserving litigants waiting their turn to be served by this Court. He has needlessly disrupted both this Court and others in multiple proceedings that have consistently been struck by various decision makers as being vexatious or an abuse of process.

[43] Finally, I note that Mr. Mitchell has failed to pay AOL and Ontario \$1,600.00 in costs each, from the dismissed claim in this Court (*Mitchell FC* at para 57). He argues that he has not paid these funds because he has not received a final outcome from his appeals to the FCA and SCC. However, he provides no evidence of any ongoing appeal. His attempted appeal to the FCA, based on the record, has neither been perfected nor accepted for filing. A search in the FCA Proceedings Queries page shows no existing appeal for Mr. Mitchell under any of his aliases. His most recent appeal to the SCC has been refused for want of jurisdiction, and was never accepted for filing.

[44] Mr. Mitchell's claims paint a consistent portrait of a vexatious litigant who relitigates matters already decided, initiates proceedings strictly to embarrass and inconvenience opposing parties, and disregards the rules of the Courts (see: Order in T-146-17; 2014 ONSC 5106 at para 19; 2015 ONSC 2926 at para 4; *Mitchell ONSC* at para 11; *Mitchell FC* at para 56).

[45] In the most recent Ontario court decision, *Mitchell v Law Society of Ontario*, 2021 ONSC 5370 [*Mitchell v LSO*] at para 6, Justice Corbett thought it reasonable and necessary to control Mr. Mitchell's access by effectively declaring him a vexatious litigant as follows:

Mr. Mitchell has shown a pattern of vexatious conduct as a litigant, as described in the first direction sent to him in this cases, the cases reference in that direction, and his response to the R.2.1 notice. It is ordered that Mr. Mitchell may not commence or continue proceedings of any kind in the Divisional Court without first obtaining permission from a Divisional Court administrative judge or their designate.

[46] Mr. Mitchell's unrestricted access to the Federal Court cannot continue unabated in light of AOL's well-supported request for a section 40 Order, Ontario's lack of any objection as its co-defendant, and AGC's consent.

[47] Having so concluded, I will end on a positive note. Mr. Mitchell, you have stated that you are a Christian man of great faith and that you are guided by those values. You appeared to be genuine in these convictions in your words to the Court. You addressed me in a respectful manner in this section 40 motion, so I know that you are capable of acting in an appropriate manner before the Court. You acted the same way to the Registry Officer at the hearing.

[48] Mr. Mitchell, you evidently have the ability to be a thoughtful, sincere and respectful individual. It is my hope that after this Order, as well as that of Justice Corbett of the Divisional Court, you will rethink the manner in which you conduct any future litigation, and that you cease to launch *ad hominem* attacks against opposing counsel, judicial officers and court staff when outcomes do not go in your favour.

[49] The Order that will issue today does not forever preclude your access to the Court. You may apply for leave to institute or continue a proceeding. Leave will be granted if you can demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it. I wish you the best in your steps to advance your career going forward.

IV. Conclusion

[50] For the reasons explained above, I find it necessary, just and responsible to control Mr. Mitchell's access to the Federal Court, to prevent the use of this Court's valuable and finite time and resources for improper purposes. The motion is granted. I will accordingly issue an Order pursuant to section 40 of the *Act* declaring Mr. Mitchell a vexatious litigant.

ORDER in T-325-22

THIS COURT ORDERS that:

1. The Respondent, Mr. Richard S. Mitchell aka Dr. Richard Steve Mitchell, Rev. Richard Mitchell, and Richard Steven Mitchell, is declared to be a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, RSC 1985, c F-7.
2. Mr. Mitchell is accordingly barred from instituting new proceedings in the Federal Court, whether acting on his own behalf or represented by another person, except by leave of the Court.
3. All proceedings instituted by Mr. Mitchell in this Court which are currently still before the Court shall be stayed. The stay shall not be lifted and the proceedings shall not continue unless leave is granted by this Court.
4. The Registry shall neither accept nor file any document of any kind from Mr. Mitchell unless it is a fully compliant motion record filed under Rule 369 seeking leave to institute and/or continue proceedings in this Court.
5. The Registry shall file a copy of this Order and Reasons in any affected file(s) and shall send a copy to any affected parties in those files.
6. Mr. Mitchell must pay all outstanding costs awards resulting from his Federal Court proceedings, including \$1,600.00 to AOL and \$1,600.00 to Ontario, before he can commence or continue any further proceedings in this Court.

"Alan S. Diner"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-325-22

STYLE OF CAUSE: MR. RICHARD S. MITCHELL AKA, DR. RICHARD STEVE MITCHELL,, REV. RICHARD MITCHELL, AND, RICHARD STEVEN MITCHELL v ACADEMY OF LEARNING MISSISSAUGA – CAMPUS AND HIS MAJESTY THE KING IN RIGHT OF ONTARIO

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: SEPTEMBER 8, 2022

ORDER AND REASONS: DINER J.

DATED: SEPTEMBER 23, 2022

APPEARANCES:

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(ON HIS OWN BEHALF)

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