

Federal Court of Appeal



Cour d'appel fédérale

Date: 20170529

Docket: A-252-16

Citation: 2017 FCA 115

Present: STRATAS J.A.

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

LARRY PETER KLIPPENSTEIN

Respondent

Heard at Winnipeg, Manitoba, on May 23, 2017.

Judgment delivered at Ottawa, Ontario, on May 29, 2017.

REASONS FOR JUDGMENT BY:

STRATAS J.A.

Federal Court of Appeal



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REASONS FOR JUDGMENT

STRATAS J.A.

[1] The Attorney General applies for an order declaring the respondent a vexatious litigant under section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[2] The principles governing this application are set out in *Canada v. Olumide*, 2017 FCA 42. Bearing in mind the guidance given in *Olumide* at paras. 39-40, these reasons are brief.

[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. These proceedings exhibit many of the hallmarks or badges of vexatious behaviour discussed at paragraph 34 of *Olumide*.

[4] A litigant's behaviour in just a single proceeding in this Court can result in section 40 remedies: *Olumide* at para. 25. However, in multiple appeals, motions and other proceedings in this Court the respondent has manifested the hallmarks or indicia of vexatious behaviour. This Court is satisfied that unless section 40 relief is granted in this application, the respondent's behaviour will "likely...recur in multiple proceedings" in this Court. See *Olumide* at para. 24.

[5] The first appeal to this Court concerned the Federal Court's decision to strike a proceeding brought by the respondent. In the Federal Court, the respondent sought a contempt order against the Registry for failing to provide a means of oath that does not offend his conscience. The respondent refuses to affirm rather than swear an oath. The Federal Court struck out the proceeding. This Court dismissed the respondent's appeal (file A-135-14): 2014 FCA 216. This Court rejected the respondent's submissions concerning the oath.

[6] The respondent attempted to reopen the issue concerning the oath in the Federal Court by trying to convert a direction dealing with the oath issue into an order. He also brought fresh

proceedings upon it. The Federal Court rebuffed these instances of relitigation. On appeal, after three meritless motions, this Court dismissed the appeal (A-503-14), calling it “vexatious and a waste of judicial resources”: Order of February 27, 2015. The respondent applied for leave to appeal to the Supreme Court. After the Supreme Court dismissed his application for leave to appeal, the respondent brought two motions in this Court concerning this same matter, long since closed.

[7] In the course of one of the respondent’s appeals, the respondent sought an order from this Court appointing a litigation guardian. This was dismissed: see direction dated April 14, 2014 in file A-135-14. He then brought five separate motions, all unmeritorious, within that file. Among other things, this Court rejected an argument concerning the need to appoint a litigation guardian. Two further unsuccessful motions followed. He relitigated this issue again in another appeal without offering new facts.

[8] The respondent 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, the respondent again raises these issues. During oral argument on this application, in response to the Court’s questioning, the respondent 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.

[9] On the factual record before the Court, the Court is satisfied that unless this application is granted the respondent will continue to relitigate these previously decided issues. To prevent the

sort of deleterious consequences discussed in *Olumide* and in accordance with the purposes of section 40 described in *Olumide*, the respondent must be restrained from continuing or commencing proceedings in this Court without leave.

[10] Such a restraining order 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. Bearing in mind the purposes underlying section 40 that were discussed in *Olumide*, regulation is warranted here.

[11] Therefore, the Court will grant the section 40 application.

[12] If an issue arises that requires the respondent to start an appeal or application in this Court, the respondent must seek leave from this Court. Leave will be granted if the issue is *bona fide* and not doomed to fail. If the Court decides to grant leave, the Court can impose terms providing for court supervision or management to ensure the proceeding progresses properly.

[13] Therefore, this Court shall issue an order declaring the respondent a vexatious litigant and forbidding him from starting any new proceedings in this Court unless the Court grants leave. The Registry shall refuse to file any originating documents not accompanied by a motion in writing under Rule 369 of the *Federal Courts Rules*, SOR/98-106 seeking leave. The applicant does not seek her costs and so none shall be awarded.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-252-16

AN APPLICATION UNDER SECTION 40 OF THE *FEDERAL COURTS ACT*, R.S.C. 1985, c. F-7

STYLE OF CAUSE: THE ATTORNEY GENERAL OF CANADA v. LARRY PETER KLIPPENSTEIN

PLACE OF HEARING: WINNIPEG, MANITOBA

DATE OF HEARING: MAY 23, 2017

REASONS FOR JUDGMENT BY: STRATAS J.A.

DATED: MAY 29, 2017

APPEARANCES:

Susan Eros FOR THE APPLICANT

Larry Peter Klippenstein ON HIS OWN BEHALF

SOLICITORS OF RECORD:

William F. Pentney FOR THE APPLICANT
Deputy Attorney General of Canada