Federal Court of Appeal | Cour d'appel fédérale

Date: 20210723

Dockets: A-158-21
A-160-21
A-161-21

Citation: 2021 FCA 150

CORAM: **STRATAS J.A.**
LASKIN J.A.
LEBLANC J.A.

Docket: A-158-21

BETWEEN:

CLAUFIELD COOTE

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION and DIANNA SCARTY et al. and BANK OF NOVA SCOTIA et al.

Respondents

Docket: A-160-21

AND BETWEEN:

CLAUFIELD COOTE

Appellant

and

CANADIAN HUMAN RIGHTS COMMISSION and DIANNA SCARTY and FINANCIAL CONSUMER AGENCY OF CANADA et al.

Respondents

Docket: A-161-21

AND BETWEEN:

CLAUFIELD COOTE

Appellant

and

CANADIAN IMPERIAL BANK OF COMMERCE

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on July 23, 2021.

REASONS FOR ORDER BY: LEBLANC J.A.

CONCURRED IN BY: STRATAS J.A.
LASKIN J.A.

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REASONS FOR JUDGMENT

LEBLANC J.A.

[1] In a letter dated July 2, 2021, the Attorney General of Canada (the Attorney General) requested that the Notices of Appeal filed by the appellant in these three instances be removed from the Court's files pursuant to rule 74 of the *Federal Courts Rules,* SOR/98-106 (the Rules).

[2] Rule 74 empowers the Court to order that a document which has not been filed in accordance with the Rules, an order of the Court or an Act of Parliament, be removed from the Court file, provided all interested parties are given an opportunity to be heard.

[3] The Notices of Appeal at issue concern a single order of Lafrenière J. of the Federal Court (the Motion Judge), dated May 28, 2021 (*Coote v. Canadian Imperial Bank of Commerce*, 2021 FC 509), ordering, pursuant to rule 74, the removal from three Federal Court files of Notices of Application on the ground that these Notices had not been filed by the appellant in accordance with a vexatious litigant order (the VL Order) made by that Court on June 13, 2013 (*Lawyers' Professional Indemnity Company v. Coote*, 2013 FC 643) pursuant to section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act). The VL Order prohibited the appellant from directly or indirectly instituting or continuing any proceedings in the Federal Court of Canada and in this Court except with leave of a judge of the Federal Court (my emphasis). The respondent in the *Lawyers' Professional Indemnity Company* matter was "Anthony Coote" but the Federal Court noted, at paragraph 3 of the VL Order, that that respondent was also known "as Antoine Coote or Caufield Anthony St. Orbain Coote".

[4] The Motion Judge noted that the appellant did not deny, and in fact admitted, being one and the same person who is targeted by the VL Order and suspected the appellant of having intentionally misspelled his name in the style of cause of the three Notices of Application at issue "(by adding an 'l' to his first name) presumably in order to avoid detection by the Registry and to skirt the express requirement of the Vexatious Litigant Order that [he] first obtain leave of the Court before instituting a legal proceeding" (Motion Judge's Order at para. 7) (emphasis in original).

[5] Being satisfied that the appellant was the person subject to the VL Order, the Motion Judge concluded that the impugned Notices of Application were improperly filed. He ordered, as

a result, that they be removed from their respective Court files and that the proceedings underlying them be deemed nullities and void *ab initio*.

[6] The Attorney General contends that since the appellant has failed to seek leave to commence a proceeding in this Court, contrary to the VL Order, the Notices of Appeal at issue should be removed from the Court's files as they were not filed "pursuant to an order of the Court". He notes in that regard that the VL Order was upheld by this Court on April 10, 2014 (*Coote v. Lawyers' Professional Indemnity Company (Lawpro)*, 2014 FCA 98 (*Lawpro*)). It appears as well that the appellant was unsuccessful in seeking leave to appeal the *Lawpro* judgment to the Supreme Court of Canada (2015 CanLII 17889 (SCC)).

[7] In the alternative, that is if the order of this Court in *Fabrikant v. Canada*, 2018 FCA 206 (*Fabrikant*) is relevant, the Attorney General requests that the Court exercise its plenary jurisdiction to regulate that access by requiring the appellant to seek leave to commence proceedings in this Court. In *Fabrikant*, Stratas J.A., sitting as a single motion judge, held that a litigant who has been declared a vexatious litigant in the Federal Court, but not in this Court, is free to access this Court when the Act gives them a right to appeal

[8] The Attorney General contends that regulation is required in this matter because the appellant has been declared a vexatious litigant in the Federal Court, was found to have used a pseudonym to avoid that his vexatious litigant status be detected, and has exhibited all the hallmarks of vexatious litigation by raising issues already decided and by making unsubstantiated allegations of bias and misconduct against judicial officials.

[9] The Attorney General is not named as a respondent in the Notices of Appeal at issue but he says he is bringing these requests as a potential respondent in one or more of these three appeals. Although the Attorney General's standing in bringing these requests is not clear, rule 74(2) stipulates that the Court may make an order under rule 74(1) "of [its] own initiative" provided, again, that all interested parties are given the opportunity to be heard.

[10] Here, the appellant was provided with that opportunity and filed two letters in response to the Attorney General, one dated July 3, 2021, the other July 5, 2021. In those letters, the appellant makes a number of claims. His main contention appears to be that the Attorney General's requests are a collateral attack on a Direction issued by Laskin J.A. on June 3, 2021 under rule 72(1)(*b*). In that Direction, Laskin J.A. instructed that the notices of appeal then submitted for filing by the appellant not be accepted for filing on the ground that they failed in a number of respects to conform with the form required by the Rules. He contends that in issuing his Direction, Laskin J.A. took into account all the matters raised in the Attorney General's letter of July 2, 2021 and that said Direction is, therefore, *res judicata*.

[11] The appellant also submits that resorting to rule 74, instead of bringing a motion, is an abuse of the Court's process on the part of the Attorney General. He further argues that the VL Order made no reference to a leave requirement and that *Fabrikant* has no application in the present matter, blaming the Court for having acted as a "protagonist", instead of staying "above the fray". The appellant also shows his dissatisfaction with *Lawpro* in his response material, claiming that "the panel was never alert, had many blindspots, oversights, numerous omissions and murkiness in the Order".

[12] I am satisfied that, as required by rule 74(2), submissions were received from the parties through their exchange of correspondence and that the Court is therefore in a position to decide the rule 74 request made by the Attorney General.

[13] It is clear from the VL Order, upheld by *Lawpro*, that the appellant is prohibited from instituting proceedings in this Court without first seeking leave to do so from a judge of the Federal Court. There is no indication on the record before me that the VL Order has been varied so as to remove the leave requirement when it comes to proceedings the appellant intends to institute in this Court. On its face, then, the VL Order triggers the application of rule 74 and justifies the removal of the Notices of Appeal at issue from this Court's files.

[14] Does *Fabrikant* change that? No, it does not as I see no conflict between that decision and the Court's upholding of the VL Order. The circumstances in each case are different. But there is more. Like the appellant, Dr. Fabrikant had not been declared a vexatious litigant by order of this Court but this did not mean that he had unrestricted access to this Court. In *Fabrikant*, the Court held that Dr. Fabrikant legally had "only three avenues of access—an appeal from the Tax Court, a direct judicial review to this Court from certain particular administrative decisions, and an appeal from judgments and orders of the Federal Court <u>after the Federal Court has granted him leave to start proceedings in that Court</u>" (*Fabrikant* at para. 21; my emphasis).

[15] It is clear that the appeals the appellant has commenced against the Motion Judge's Order are not appeals from an order of the Federal Court "after [that Court] has granted him leave to

start proceedings in that Court" and that, as a result, the appellant does not have access to this Court in the present matter. In other words, the fact that he has been declared a vexatious litigant in the Federal Court by the Federal Court suffices, in and of itself, to limit the appellant's access to this Court in the present circumstances.

[16] In addition to the authority conferred by rule 74, the Court has jurisdiction to manage and regulate particular proceedings before it and, where appropriate, summarily dismiss an appeal by using its broad plenary powers. These powers have frequently been used, for example, to reject proceedings that are, among other things, frivolous or an abuse of the process of the Court (*Fabrikant v. Canada*, 2018 FCA 171, at para. 3). Recently, in *Dugré v. Canada (Attorney General)*, 2021 FCA 8, the Court had this to say on the origin and underlying principles of its plenary powers:

> [19] This Court has jurisdiction to summarily dismiss an appeal. Although the *Federal Courts Rules*, SOR/98-106 (the Rules) do not contain any specific provision allowing for the summary dismissal of an appeal, the Court has exercised this jurisdiction for decades (*David Bull Laboratories (Canada) Inc. v. Pharmacia Inc.*, [1995] 1 F.C. 588 (C.A.), at page 600).
>
> [20] This power stems from the Court's plenary jurisdiction (*Canada (National Revenue) v. RBC Life Insurance Company*, 2013 FCA 50, 443 N.R. 378, at para. 36; *Lee v. Canada (Correctional Service)*, 2017 FCA 228 [*Lee*], at para. 6). This Court has not only the powers conferred by statute but also the powers necessary for its effective functioning (*Canada (Human Rights Commission) v. Canadian Liberty Net*, [1998] 1 S.C.R. 626, 224 N.R. 241; *Lee*, at paras. 2, 7-15; *Fabrikant v. Canada*, 2018 FCA 171, at para. 3 and the cases cited therein). As the Court explains in *Lee*, the Federal Courts, as part of the judicial branch of the government, must have the powers necessary to manage their own proceedings (*Lee*, at para. 8).
>
> [21] This power also manifests itself in the Rules through the combined effect of Rule 74 (removal of proceedings brought without jurisdiction), Rule 4 (the gap rule) and Rule 55 (power to vary a rule, in this case Rule 74, in "special circumstances").

[17] Commencing a proceeding in the Federal Court without seeking leave to do so as required by the VL Order, and then appealing the Federal Court's decision dismissing the proceeding - and rightly deeming it a nullity - is clearly, in my view, an abuse of this Court's process.

[18] I am satisfied, therefore, that there is ample authority for the Court to, on its own motion, remove the impugned Notices of Appeal from the Court's files and terminate the appeals commenced by the appellant against the Motion Judge's Order.

[19] In so concluding, I am satisfied too that the appellant's submissions in response to the Attorney General's letter of July 2, 2021, have no merit. First, there are no indications on the record before me that the issues raised in the Attorney General's letter were put before Laskin J.A. His Direction of June 3, 2021 dealt with other matters linked to the form of the documents presented by the appellant for filing. This is simply not a case of *res judicata*. Second, contrary to the appellant's contention, the VL Order clearly provides for a leave requirement for the commencement of proceedings both in the Federal Court and in this Court. This requirement is part of the order itself, which was attached to the Attorney General's letter. This order was issued simultaneously with the Federal Court's "Reasons for Order" that are found at 2013 FC 643.

[20] Finally, the remaining submissions in the appellant's letters are of no assistance to him. To the contrary, they are evidence of vexatiousness in this Court, as appropriately noted by the Attorney General. The appellant has not been declared vexatious in this Court. Often not much

evidence need be filed to support a finding of vexatiousness under this Court's revised test for vexatiousness (*Canada v. Olumide*, 2017 FCA 42, [2018] 2 F.C.R. 328 at paras. 35-38).

[21] Given my conclusion that the impugned Notices of Appeal must be removed from the Court's files and that the three appeals from the Motion Judge's order are, as a result, to be terminated, there is no need to address the appellant's request for direction regarding the contents of the appeal books. There is no need either to consider his demand that the "Potential Respondents" be directed to prepare "both Joint Books of Authorities and Joint Appeal Books" and "seek extension of additional time […] to perfect their Appeals accordingly".

[22] As the Attorney General is not a party to these appeals and, as mentioned above, since the Court is acting on its own initiative, I would award no costs.

"René LeBlanc"

J.A.

"DS"

"JBL"

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET:	A-158-21
STYLE OF CAUSE:	CLAUFIELD COOTE v. CANADIAN HUMAN RIGHTS COMMISSION and DIANNA SCARTY et al. and BANK OF NOVA SCOTIA et al.
AND DOCKET:	A-160-21
STYLE OF CAUSE:	CLAUFIELD COOTE v. CANADIAN HUMAN RIGHTS COMMISSION and DIANNA SCARTY and FINANCIAL CONSUMER AGENCY OF CANADA et al.
AND DOCKET:	A-161-21
STYLE OF CAUSE:	CLAUFIELD COOTE v. CANADIAN IMPERIAL BANK OF COMMERCE

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY:	LEBLANC J.A.
CONCURRED IN BY:	STRATAS J.A. LASKIN J.A.
DATED:	JULY 23, 2021

WRITTEN REPRESENTATIONS BY:

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Josh Hoffman	FOR THE RESPONDENT BANK OF NOVA SCOTIA IN FILE A-158-21

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