Federal Court of Appeal | Cour d'appel fédérale

Date: 20250321

Dockets: A-177-24 (Lead File)
A-189-24
A-190-24

Citation: 2025 FCA 66

CORAM: **BOIVIN J.A.**
GLEASON J.A.
BIRINGER J.A.

BETWEEN:

KRISTIN ERNEST HUTTON

Appellant

and

RIA SAYAT, LYNN DUHAIME ALSO KNOWN AS STEPHANIE DUHAIME, THE FORMER CANADIAN CHARGE D'AFFAIRES FOR THE REPUBLIC OF IRAQ, THE ATTORNEY GENERAL OF CANADA (ON BEHALF OF THE DEPARTMENT OF NATIONAL DEFENCE, CANADIAN SECURITY INTELLIGENCE SERVICE AND COMMUNICATIONS SECURITY ESTABLISHMENT) AND HIS MAJESTY THE KING

Respondents

Heard at Toronto, Ontario, on March 18, 2025.

Judgment delivered at Ottawa, Ontario, on March 21, 2025.

REASONS FOR JUDGMENT BY: BIRINGER J.A.

CONCURRED IN BY: BOIVIN J.A.
GLEASON J.A.

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REASONS FOR JUDGMENT

BIRINGER J.A.

[1] The appellant appeals three decisions of the Federal Court. The main appeal is of a decision (*per* Aylen J.) declaring the appellant to be a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7, quashing three matters commenced in the Federal Court and ordering all other Federal Court matters discontinued: 2024 FC 601. The two other appeals are of costs orders relating to the quashed matters: 2024 FC 784 and 2024 CanLII 48706.

[2] The four actions that the Federal Court ordered quashed or discontinued were:

- Action T-268-17: the appellant named multiple federal defendants, including the Department of National Defence, the Canadian Security Intelligence Service (CSIS), the Communications Security Establishment and the Attorney General, claiming unlawful surveillance, invasion of privacy and misfeasance of public office. The appellant also named two former romantic partners (Ms. Sayat and Ms. Duhaime) claiming that they were part of the CSIS "security apparatus" and unlawfully spying on him. The appellant sought damages.

- Application T-1143-19: the appellant sought judicial review of a decision by the former Office of the Communications Security Establishment Commissioner, dismissing his complaint for allegations of modification and destruction of material on the appellant's smartphone and manipulation of his electronic communications.

- Application T-868-21: the appellant sought to challenge the constitutional validity and applicability of section 18.2 of the *Canadian Security Intelligence Service Act*, R.S.C. 1985, c. C-23 and any binding policy respecting the application or operation of the provision.

- Application T-674-24: the appellant sought judicial review of a report of the Office of the Information Commissioner of Canada, arising from the appellant's complaint that CSIS was unlawfully withholding certain records.

[3] The appellant brought a motion in this Court for the introduction of nine items of new evidence. After considering the parties' motion records and oral submissions made at the beginning of the hearing, the Court dismissed the motion from the bench with costs in the cause. The reason for the dismissal was that the criteria for the introduction of new evidence on appeal had not been met: Rule 351 of the *Federal Courts Rules*, S.O.R./98-106; *Coady v. Canada (Royal Mounted Police)*, 2019 FCA 102 at para. 3; *Palmer v. The Queen*, 1979 CanLII 8 (SCC), [1980] 1 S.C.R. 759 at p. 775; *Bell Canada v. Adwokat*, 2023 FCA 106 at para. 4.

[4] Turning to the merits of the main appeal, the Federal Court's decision declaring the appellant a vexatious litigant and quashing matters as "doomed to fail" was discretionary: *Turmel v. Canada (Attorney General)*, 2023 FCA 197 at para. 7 [*Turmel*]; *Feeney v. Canada*, 2022 FCA 190 at para. 4; *Democracy Watch v. Canada (Prime Minister)*, 2023 FCA 41 at para. 11. This Court will not intervene unless the Federal Court erred in law or committed a palpable and overring error in determining an issue of fact or of mixed fact and law: *Housen v.*

Nikolaisen, 2002 SCC 33 [*Housen*]; *Hospira Healthcare Corporation v. Kennedy Institute of Rheumatology*, 2016 FCA 215. A "palpable" error is one that is obvious; an "overriding" error is an error that would affect the outcome: *Benhaim v. St-Germain*, 2016 SCC 48 at para. 38 [*Benhaim*], citing *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 at para. 46.

[5] The Federal Court judge correctly identified the applicable case law on a section 40 motion, including the "hallmarks" of vexatious conduct outlined in this Court's decision in *Turmel* at para. 2, citing *Olumide v. Canada*, 2016 FC 1106 at paras. 9 and 10 [*Olumide FC*], which was also cited in *Canada v. Olumide*, 2017 FCA 42 at para. 34. The Federal Court judge referred to the Court's power to quash proceedings at any time if they are doomed to fail owing to a fatal flaw or absence of any merit: *Bernard v. Canada (Professional Institute of the Public Service)*, 2019 FCA 236 at para. 10; see also *Dugré v. Canada (Attorney General)*, 2021 FCA 8 at paras. 19-22.

[6] Upon review of the appellant's extensive litigation history before the Federal Courts, including evidence filed by the parties and information in various Court files, the Federal Court judge concluded that the appellant had pursued his claims in an abusive and vexatious manner and was "ungovernable". The appellant's conduct included bringing multiple actions and motions with lengthy records (requiring the issuance of over 60 directions, 10 case management conferences and over 483 recorded entries), failing to pursue litigation in a timely manner, advancing claims ordered struck and being otherwise non-compliant with the Court's orders, Rules and procedures. The Federal Court judge concluded that the appellant's pursuit of claims against Ms. Sayat and Ms. Duhaime amounted to harassment.

[7] The Federal Court judge determined that the appellant had tendered no credible and probative evidence to suggest that his claims in the underlying proceedings were based on anything other than his mental health condition, finding them "doomed to fail". The Federal Court considered the appropriate restrictions to be placed on the appellant's access to the Court, with reference to this Court's decision in *Canada (Attorney General) v. Fabrikant*, 2019 FCA 198 at para. 45 [*Fabrikant*]. The Federal Court ordered that the appellant could not initiate any matter in the Federal Court without leave and ordered existing matters in the Federal Court quashed or discontinued.

[8] The appellant has not identified any error in the Federal Court's decision that warrants this Court's intervention. The appellant's submissions fail to meaningfully address his conduct in the Federal Court and the impact on the parties and the Court. At the hearing, the appellant acknowledged that his litigation conduct had been vexatious. The appellant indicated that he would accept the terms of the Federal Court's order requiring leave to commence new proceedings but urges this Court to allow him to continue the existing proceedings which he says have merit. At its core, the appellant's position is a disagreement with the Federal Court judge's findings and conclusions on the merits of the underlying proceedings.

[9] The appellant, in his memorandum of fact and law, repeats an argument made at the Federal Court that the necessary consent under subsection 40(2) of the *Federal Courts Act* was not obtained from the Attorney General. I agree with the Federal Court's conclusion, having regard to this Court's decision in *Coote v. Lawyers' Professional Indemnity Company (Lawpro)*,

2014 FCA 98 at para. 11, that the Assistant Deputy Attorney General could validly provide consent as it did here.

[10] The appellant takes issue with the Federal Court's reliance on findings made by other Federal Court judges and by the Law Society Tribunal (Ontario) in various proceedings involving the appellant. For example, another Federal Court judge, in dismissing a motion of the appellant, referred to the "extraordinary farrago of claims" in the underlying action, and stated that the claims had "no apparent basis in reality and are predicated on delusions": *Hutton v. Sayat*, 2020 FC 1183 at paras. 1 and 2. The Law Society Tribunal found that the appellant lacked capacity to act as a lawyer by virtue of mental illness marked by delusion and suspended his licence to practice. The appellant says that the comments of the Federal Court judges were *obiter* in those other proceedings and that the Law Society Tribunal hearing was procedurally unfair.

[11] The Federal Court was entitled to consider assessments of the appellant's conduct in other proceedings at the Federal Court and the Law Society Tribunal hearing: *Lessard-Gauvin v. Canada (Attorney General)*, 2021 FCA 94 at para. 12; *Coady v. Canada (Attorney General)*, 2020 FCA 154 at paras. 27-29. Indeed, one of the hallmarks of vexatiousness is being admonished by various courts for vexatious and abusive behaviour: *Olumide FC* at para. 10. The Federal Court did not err in taking these into account.

[12] The appellant submits that the Federal Court judge erred in adopting the conclusion of the Law Society Tribunal, which was based on the opinion of a psychiatrist, that the appellant had a delusional disorder. The appellant cites a contrary expert report. The appellant challenges the

finding of the Federal Court judge that there was “no credible and probative evidence” to suggest that the appellant’s claims were based on anything other than his mental health condition. He submits what he believes to be evidence of the “security apparatus” operations to demonstrate that the claims have merit.

[13] The appellant’s approach is fundamentally flawed. The Federal Court did not “adopt” the findings of other decision-makers. The Federal Court judge was keenly aware of the alleged foundation of the claims in the underlying proceedings, including by virtue of having been the case management judge in underlying matters for several years. The conclusion reached by the Federal Court judge on the lack of merit to those claims was amply supported by the material available to her and is owed deference: see 2024 FC 601 at para. 77; *Benhaim* at para. 37; *Mahjoub v. Canada (Citizenship and Immigration)*, 2017 FCA 157 at paras. 60-68 [*Mahjoub*].

[14] Moreover, the appellant is asking this Court to re-evaluate the merits of the underlying matters and come to a different conclusion than the Federal Court judge. Under the “palpable and overriding error” standard, we are prohibited from doing so: *Mahjoub* at paras. 79 and 80; *Amgen Inc. v. Pfizer Canada ULC*, 2020 FCA 188 at para. 12. The Federal Court judge did not err in finding no basis for the appellant’s claims in the underlying proceedings and that they were doomed to fail.

[15] Finally, I do not accept the appellant’s submission that the Federal Court’s order is vague, overbroad and unfair. The order follows this Court’s guidance on the relevant principles in crafting a vexatious litigant order, balancing a vexatious litigant’s right to access the Court with

appropriate protections for the Court and other litigants before it: *Fabrikant* at paras. 44 and 45. There is no reason for this Court to disturb the order.

[16] The appellant has failed to establish that the Federal Court judge erred in any manner that warrants our intervention. I agree with the conclusions of the Federal Court judge and the comprehensive reasons given. The appellant's ungovernability and harmful conduct in proceedings at the Federal Court justify the restrictions imposed in the Federal Court's order. The Federal Court judge did not err in concluding that the underlying proceedings were doomed to fail.

[17] In the costs order relating to Action T-268-17, the Federal Court awarded costs on a solicitor-client basis to Ms. Sayat in the amount of $68,071.55 (inclusive of taxes and disbursements) and costs pursuant to Column V of Tariff B of the *Federal Courts Rules* to the Attorney General in the amount of $14,365.76 (inclusive of taxes and disbursements). In the costs order relating to Application T-1143-19, the Federal Court awarded costs to the Attorney General largely based on Column III of Tariff B of the *Federal Courts Rules* in the amount of $2,299 (inclusive of taxes and disbursements). The appellant appeals these decisions.

[18] Rule 400(1) of the *Federal Courts Rules* gives the Court "full discretionary power over the amount and allocation of costs". Costs awards are subject to the *Housen* standard, described above. Absent a question of law, a costs order will only be set aside if there is a palpable and overriding error: *Sun Indalex Finance, LLC v. United Steelworkers*, 2013 SCC 6 at para. 247,

citing *Hamilton v. Open Window Bakery Ltd.*, 2004 SCC 9 at para. 27; *Shull v. Canada*, 2025 FCA 25 at para. 44.

[19] The appellant made no submissions on costs at the Federal Court and no written or oral submissions in this Court on the Federal Court's costs decisions. Based on the notices of appeal, the appellant raises his alleged status as a public interest litigant (which he submits would militate against costs being awarded to the respondents) and alleged deficiencies in Ms. Sayat's costs submissions at the Federal Court. Putting aside the valid concern that these are new issues raised on appeal, they have no merit.

[20] The appellant does not satisfy the criteria for a public interest litigant; the appellant's claims raise no issue of public importance: *Doherty v. Canada (Attorney General)*, 2021 FC 695 at para. 8; *Carter v. Canada (Attorney General)*, 2015 SCC 5 at para. 140. Further, it is apparent from the Federal Court's decision that the judge carefully considered Ms. Sayat's bill of costs and determined the amounts to be reasonable. The Federal Court judge was well aware of the history of the underlying litigation and associated costs, having case managed various matters for several years. I see no error in the Federal Court's decision to award solicitor-client costs to Ms. Sayat based on the appellant's abusive and vexatious pursuit of claims against her: *Salt Canada Inc. v. Baker*, 2020 FCA 127 at para. 61; *Young v. Young*, [1993] 4 SCR 3, 108 D.L.R. (4th) 193. There is no basis for this Court to intervene.

[21] The parties requested that the costs on the appeals be addressed concurrently with the disposition of the appeals. The appellant did not make submissions responding to the requests for

costs made by Ms. Sayat and the Attorney General. Ms. Sayat asks for solicitor-client costs in the amount of $19,929.81(inclusive of taxes and disbursements) and submitted a bill of costs. Ms. Sayat submits that solicitor-client costs are appropriate considering the appellant's harassing, vexatious and abusive litigation conduct that has persisted in these appeals. I agree. The appellant attempts to relitigate issues already decided and argue new issues not raised in the Court below, all with apparent disregard for the parties' and the Court's resources. This is an exceptional case where solicitor-client costs are warranted, for substantially the reasons given by the Federal Court in its costs decision regarding Ms. Sayat: 2024 FC 784 at paras. 6, 17 and 18.

[22] The Attorney General requests costs in the amount of $1,000 (inclusive of taxes and disbursements). I find this to be reasonable.

[23] I would dismiss all three appeals, with total costs for all three appeals of $19,929.81 (inclusive of taxes and disbursements) awarded to Ms. Sayat and $1,000 (inclusive of taxes and disbursements) awarded to the Attorney General. The costs awards shall bear post-judgment interest at the rate of 5% per annum from the date of issuance of this decision.

"Monica Biringer"
J.A.

"I agree.
Richard Boivin J.A."

"I agree.
Mary J.L. Gleason J.A."

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKETS:	A-177-24, A-189-24 AND A-190-24
STYLE OF CAUSE:	KRISTIN ERNEST HUTTON v. RIA SAYAT, et al.
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	MARCH 18, 2025
REASONS FOR JUDGMENT BY:	BIRINGER J.A.
CONCURRED IN BY:	BOIVIN J.A. GLEASON J.A.
DATED:	MARCH 21, 2025

APPEARANCES:

Kristin Ernest Hutton	FOR THE APPELLANT (SELF-REPRESENTED)
Natai Shelsen Rachael Gardner	FOR THE RESPONDENT RIA SAYAT
Stewart Phillips James Stuckey	FOR THE RESPONDENTS THE ATTORNEY GENERAL OF CANADA (ON BEHALF OF THE DEPARTMENT OF NATIONAL DEFENCE, CANADIAN SECURITY INTELLIGENCE SERVICE AND COMMUNICATIONS SECURITY ESTABLISHMENT) AND HIS MAJESTY THE KING

SOLICITORS OF RECORD:

Goldblatt Partners LLP Toronto, Ontario	FOR THE RESPONDENT RIA SYAT
Shalene Curtis-Micallef Deputy Attorney General of Canada	FOR THE RESPONDENT THE ATTORNEY GENERAL OF CANADA (ON BEHALF OF THE DEPARTMENT OF NATIONAL DEFENCE, CANADIAN SECURITY INTELLIGENCE SERVICE AND COMMUNICATIONS SECURITY ESTABLISHMENT) AND HIS MAJESTY THE KING