Federal Court of Appeal | Cour d'appel fédérale

Date: 20250414

Docket: A-20-24

Citation: 2025 FCA 81

PRESENT: LEBLANC J.A.

BETWEEN:

PUBLIC SERVICE ALLIANCE OF CANADA

Applicant

and

PAUL ABI-MANSOUR

Respondent

Heard at Ottawa, Ontario, on March 13, 2025.

Judgment delivered at Ottawa, Ontario, on April 14, 2025.

REASONS FOR JUDGMENT BY: LEBLANC J.A.

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REASONS FOR JUDGMENT

LEBLANC J.A.

[1] The Public Service Alliance of Canada applies for an order declaring the respondent, Paul Abi-Mansour, a vexatious litigant pursuant to section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7 (the Act). As required by subsection 40(2) of the Act, this application has been made with the consent of the Attorney General of Canada.

[2] Mr. Abi-Mansour is a former member of the Public Service Alliance of Canada in his capacity as an employee of the federal government. The applicant claims that Mr. Abi-Mansour "has been a serial litigator since 2010, at the earliest". It says that Mr. Abi-Mansour has, over that period, frequently exhibited vexatious behaviour, and that his behaviour has, on occasion, been denounced in no uncertain terms by decision-makers. It notes that Mr. Abi-Mansour has been a party to "at least 66 decisions (reported and unreported)", including 21 decisions emanating from this Court.

[3] The applicant claims that despite these warnings, Mr. Abi-Mansour has again exhibited vexatious behaviour both before the Federal Public Sector Labour Relations and Employment Board (the Board) and this Court, in relation to an unfair representation complaint he filed against the applicant in April 2018 pursuant to section 187 of the *Federal Public Sector Labour Relations Act*, S.C. 2003, c. 22, s. 2 (the Complaint Proceedings). The applicant contends that Mr. Abi-Mansour's conduct in these proceedings warrants, on its own, a vexatious litigant order. In any event, it submits that such an order is warranted when this conduct is viewed as the latest chapter in Mr. Abi-Mansour's litigation history before various courts and administrative decision-makers.

[4] The applicant seeks an order barring Mr. Abi-Mansour from commencing or continuing any proceedings in this Court except with leave of the Court. It further seeks that any such leave only be granted if Mr. Abi-Mansour demonstrate that all outstanding costs awarded against him in this Court have been paid in full.

[5] According to subsection 40(1) of the Act, the applicant, to succeed, must satisfy the Court that Mr. Abi-Mansour "has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner".

[6] In *Feeney v. Canada*, 2022 FCA 190 (*Feeney*), a panel of this Court reminded that vexatiousness "comes in all shapes and sizes" and is best to not be precisely defined (*Feeney* at para. 24, quoting from *Canada v. Olumide*, 2017 FCA 42 at para. 32 (*Olumide*)). As stated in *Olumide*, vexatiousness draws its meaning "mainly from the purposes of section 40", which "reflects the fact that the Federal Courts are community property that exists to serve everyone, not a private resource that can commandeered in damaging ways to advance the interests of one" (*Olumide* at paras. 17 and 31-32).

[7] As community property, courts and judges must ensure that their finite resources and limited capacity to deal with all sorts of litigants, who come before them, are not squandered. As stated in *Olumide* at paragraph 19 (see also for e.g., *Coady v. Canada (Attorney General)*, 2020 FCA 154 at para. 22 (*Coady*)):

> [19] […]. 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.

[8] A non-exhaustive list of vexatiousness indicia can be gleaned from this Court's case law: (a) being admonished by various courts for engaging in vexatious and abusive behaviour; (b) instituting frivolous proceedings; (c) making scandalous and unsupported allegations against

opposing parties or the Court; (d) re-litigating issues which have already been decided against the vexatious litigant; (e) bringing unsuccessful appeals of interlocutory and final decisions; (f) ignoring court orders and court rules; and (g) refusing to pay outstanding costs awards (*Feeney* at para. 20; *Turmel v. Canada (Attorney General)*, 2023 FCA 197 at para. 2).

[9] The express wording of section 40 makes it clear that vexatious behaviour in a single matter may provide sufficient basis to issue a vexatious litigant order (*Olumide* at para. 25). Further, evidence of vexatious conduct in other judicial or quasi-judicial fora is relevant in determining whether such an order is warranted (*Lessard-Gauvin v. Canada (Attorney General)*, 2021 FCA 94 at para. 12; *Coady* at paras. 27-29).

[10] Vexatious behaviour can be proven by an affidavit providing "only the most relevant information, court decisions that describe the litigant's intentions and conduct, and selected pleadings and documents that demonstrate vexatiousness" (*Olumide* at para. 36).

[11] At first glance, the number and nature of the submissions made by the applicant in support of its application, together with the examples of misconduct it provided, do support in my view, the merits of said application. Here are the most salient aspects:

a) Mr. Abi-Mansour has been warned by this Court, as early as 2014, that repeated unsupported allegations of bias were an abuse of process exposing him to the dismissal of his proceedings either at the request of the opposing party or on the

Court's own initiative (*Abi-Mansour v. Canada (Aboriginal Affairs)*, 2014 FCA 272 at paras. 14-15);

b) In 2015, this Court noted that the same type of unsupported bias allegations had been made by Mr. Abi-Mansour in another matter, together with unsubstantiated allegations that counsel for the opposite party was acting without instructions (*Abi-Mansour v. Canada (Foreign Affairs and International Trade Canada)*, 2015 FCA 135 at para. 17);

c) In 2016, the Court noted that Mr. Abi-Mansour was "still making disrespectful and unfounded allegations against members of the Federal Courts despite having been cautioned on several occasions to cease this unacceptable practice" and was warned "for the last time to cease and desist from making such abusive and vexatious statements whenever he fails to get his way" (*Abi-Mansour v. Canada (Passport Canada)*, 2016 FCA 5 at para. 14-37);

d) More recently, in the Complaint Proceedings, this Court, in an order dated March 8, 2023, denied the extensions of time Mr. Abi-Mansour was seeking to pursue his application for judicial review of the Board's dismissal of his unfair representation complaint on the ground that, given his overall conduct, it was not in the interest of justice to grant these extensions for him to pursue the underlying judicial review proceedings. In doing so, the Court noted Mr. Abi-Mansour's "long history of abusing legal proceedings and making false accusations for which he has been frequently warned", be it in "the Federal Courts, the Ontario Court of Appeal and Superior Court, and various administrative tribunals". It underscored

that Mr. Abi-Mansour had "shown the same abusive and vexatious behaviour in the current proceeding" (*Paul Abi-Mansour v. Public Service Alliance of Canada*, March 8, 2023, Order, A-173-22, unreported);

e) In that same proceeding, the Court, in an order dated June 5, 2023, dismissed Mr. Abi-Mansour's motion to extend the time to bring a motion for reconsideration of the March 8 (2023) order. It held that this motion was the "latest illustration of [Mr. Abi-Mansour's] failure to abide by the Court's Rules and to show respect for the Court's process". The Court noted, as well, that Mr. Abi-Mansour was questioning the "impartiality and professionalism of the judges who signed the March 8, 2023 Order for no other reason than having decided against him" (*Paul Abi-Mansour v. Public Service Alliance of Canada*, June 5, 2023, Order, A-173-22, unreported);

f) In a disciplinary matter involving Mr. Abi-Mansour and the Ontario College of Teachers, the Ontario Court of Appeal noted Mr. Abi-Mansour's tendency to bring "frivolous and meritless interlocutory motions" (*Abi-Mansour v. Ontario College of Teachers*, 2016 ONCA 928 at para. 3) and deliberately delay the proceeding (*Abi-Mansour v. Ontario College of Teachers*, 2016 ONCA 602 at para. 12);

g) Mr. Abi-Mansour was also found to have made abusive, unsubstantiated comments against counsel for opposing parties. As indicated above, in one instance, he commented that counsel for the opposite party was acting without instructions (*Abi-Mansour v. Canada (Foreign Affairs and International Trade*

Canada), 2015 FCA 135 at para. 17). In another, he claimed that counsel had adopted a strategy based on "lying and defamation, 'patently unreasonable' arguments and 'bald manipulations'" (*Abi-Mansour v. Canada (Revenue Agency)*, 2015 FC 883 at para. 58). More recently, in the Complaint Proceedings, he "maliciously questioned the mental health of counsel for the respondent" (*Paul Abi-Mansour v. Public Service Alliance of Canada*, June 5, 2023, Order, A-173-22, unreported); and

h) Mr. Abi-Mansour's misconception of the *Federal Courts Rules*, SOR/98-106 (the Rules) as being mere guidelines that he could disregard, when they conflict with his own choices and order of priorities, has been an issue throughout Mr. Abi-Mansour's long litigation history (*Abi-Mansour v. Canada (Passport)*, 2015 FC 363 at paras. 29-33), so has his general tendency not to abide by the Rules (*Paul Abi-Mansour v. Public Service Alliance of Canada*, June 5, 2023, Order, A-173-22, unreported) and to not pay the costs orders issued against him, which he does not deny (*Paul Abi-Mansour v. Attorney General of Canada*, 2015 FCA 244 at para. 7; *Abi-Mansour v. Canada (Passport Canada)*, 2016 FCA 5 at para. 37; Respondent's Memorandum of Fact and Law, at paras. 138-145).

[12] Mr. Abi-Mansour opposes the present application on several grounds. First, he claims that this Court has no jurisdiction to deal with a stand-alone application under section 40 of the Act. He says that a vexatious litigant order can only be obtained by way of motion within an existing proceeding. This issue has been settled in *Bernard v. Canada (Attorney General)*,

2019 FCA 144 (*Bernard*), a decision issued by a three-judge panel of this Court. In that case, the alleged vexatious litigant was arguing that a vexatious litigant order could only be obtained by way of an application. Our Court concluded that in the context of section 40 of the Act, proceeding by way of motion within an existing proceeding or by way of a stand-alone application "ha[d] been seen as identical and interchangeable", both offering the same level of protection in all meaningful procedural respects (*Bernard* at paras. 8-10, citing *Olumide* at paras. 34 and 42). In addition, contrary to Mr. Abi-Mansour's argument, this Court's authority to consider an application for a vexatious litigant does not have to be set out in sections 27 and 28 of the Act as that authority is spelled out in no equivocal terms in section 40.

[13] Mr. Abi-Mansour's submissions based on the doctrines of *functus officio*, issue estoppel and abuse of process, the so-called "doctrine of election" and Rule 74, must fail as well because they are all premised on the argument that the applicant could only seek a vexatious litigant order by way of a motion within an existing proceeding, namely, here, the Federal Court of Appeal segment of the Complaint Proceedings (file no. A-173-22).

[14] Mr. Abi-Mansour further contends that a vexatious litigant order would annihilate his access to justice. This is not so. This Court has stated on numerous occasions that an order under subsection 40(1) of the Act only regulates the litigant's access to the courts; it does not deny that access. In that sense, section 40 is "a gate-keeping mechanism whereby the litigant is required to get leave before starting or continuing a proceeding" (*Coady* at para. 23; *Feeney* at para. 26). Whether leave will be granted in any given case will depend on each case's particular circumstances.

[15] Mr. Abi-Mansour further claims that this Court's interpretation of section 40 of the Act is clearly wrong. Relying on provincial jurisprudence, he proposes his own interpretation of that provision and of the terms "persistently" and "vexatious" found therein. As is well settled, this Court, as any other Court, normally follows its prior decisions; the certainty, consistency and predictability of the law depends on that (*Miller v. Canada (Attorney General)*, 2002 FCA 370 at para. 9 (*Miller*)). It is only in "exceptional circumstances" that it will overrule a prior decision, which will generally – but rarely – occur when that decision is "manifestly wrong, in the sense that the Court overlooked a relevant statutory provision, or a case that ought to have been followed" (*Miller* at para. 10; *Feeney* at para. 16).

[16] Section 40 of the Act is the subject of an important and consistent body of jurisprudence from this Court comprised not only of single-judge orders but also of three-judge panel decisions. Mr. Abi-Mansour has simply failed to establish that this body of jurisprudence is "manifestly wrong".

[17] Mr. Abi-Mansour submits as well that any vexatious litigant order issued pursuant to section 40 of the Act can only benefit one specific party. This submission is without merit. As indicated previously, section 40 is aimed at regulating access to this Court or the Federal Court in instances where the alleged vexatious litigant's behaviour puts at risk the Court's finite resources and limited capacity to deal with all sorts of litigants who come before them. As stated at paragraph 20 of *Olumide*:

> [20] This isn't just a zero-sum game where a single vexatious litigant injures a single innocent litigant. A single vexatious litigant gobbles up scarce judicial and

> registry resources, injuring tens or more innocent litigants. The injury shows itself in many ways: to name a few, a reduced ability on the part of the registry to assist well-intentioned but needy self-represented litigants, a reduced ability of the court to manage proceedings needing management, and delays for all litigants in getting hearings, directions, orders, judgments and reasons.

[18] On the issue of the costs orders issued against him, Mr. Abi-Mansour essentially contends that these orders trigger a creditor-debtor relationship governed by the provincial laws on garnishment and that, as a result, he is "well within his rights to require the [a]pplicant bring the proper enforcing procedure to collect its costs award according to law, as opposed to giving all his salary to the [a]pplicant and renouncing all the protections he enjoys as a judgment debtor" (Respondent's Memorandum of Fact and Law at para. 145). In other words, Mr. Abi-Mansour has chosen to deliberately disregard these orders to let the rules on garnishment play out.

[19] I agree with the applicant that that position further underscores the need for a vexatious litigant order, because it confirms that traditional costs orders are insufficient to regulate Mr. Abi-Mansour's behaviour.

[20] Mr. Abi-Mansour submits that the present application should be dismissed because he never had the intention of bringing vexatious or abusive proceedings. However, this argument misses the mark and is of no assistance to him. As stated in *Feeney*, at paragraph 25, citing *Olumide*:

> [25] […] section 40 of the Act is not only aimed at litigants who pursue unacceptable purposes and litigate to cause harm. It is also aimed at those who

> have good intentions but "litigate in a way that implicates section 40's purposes" (*Olumide* at para. 33).

[21] Having considered the numerous examples of Mr. Abi-Mansour's inappropriate behaviour raised by the applicant, I am convinced that the application for a vexatious litigant order should be granted. Otherwise, I am of the view that this Court can expect for Mr. Abi-Mansour's inappropriate and ungovernable conduct to persist, as evidenced, despite numerous warnings, by his unsubstantiated attacks against members of this Court in the affidavit dated May 17, 2024 (the Affidavit), which he filed in response to the present application (Respondent's Affidavit at paras. 12 and 84-92).

[22] The applicant also seeks an order under Rule 74 striking paragraphs 14 to 31, 55, 77 and 78 of the Affidavit on the ground that they: (i) amount to a collateral attack of the Orders issued by this Court on March 8 and June 5, 2023, in the Complaint Proceedings (paras. 14-31); (ii) refer to information protected by settlement privilege (para. 55); and (iii) are abusive (paras. 77-78). In my view, none of the information contained in these paragraphs assist Mr. Abi-Mansour in the present proceeding. It is given no weight. In the result, there is no need to also issue an order under Rule 74 striking these paragraphs from the Affidavit.

[23] Finally, the day following the hearing of this application, that is on March 14, 2025, Mr. Abi-Mansour, without leave, sent further written submissions to the Court in which: (i) he reiterated that an order under section 40 of the Act cannot be obtained on the basis of vexatious behaviour in one proceeding only; (ii) stated that he would not pay costs "in the frequency that will have the effect of renouncing the unseizable portion of his salary"; and (iii) offered to file

further evidence relating to the child support payments he allegedly makes to his common-law partner.

[24] The appellant has objected to the filing of these additional submissions, claiming that Mr. Abi-Mansour was provided a full opportunity to present evidence and arguments in accordance with the Rules. It says that this is just further evidence of Mr. Abi-Mansour's ungovernability.

[25] I agree that Mr. Abi-Mansour was provided a full opportunity to file evidence in response to the present application and that it is now too late to do so. I am also satisfied that there is nothing new in the additional submissions Mr. Abi-Mansour has attempted to file. These submissions were considered and rejected.

[26] For all these reasons, the present application will be granted, as sought.

"René LeBlanc"

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

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