

Federal Court



Cour fédérale

Date: 20160425

Docket: T-674-05

Citation: 2016 FC 455

[UNREVISED ENGLISH CERTIFIED TRANSLATION]

Ottawa, Ontario, April 25, 2016

PRESENT: The Honourable Madam Justice Tremblay-Lamer

BETWEEN:

ALBERT DUTERVILLE

Applicant

and

**D. IAN GLEN
PIERRE BERNIER
YVES FAFARD
THE ATTORNEY GENERAL OF CANADA**

Respondents

JUDGMENT AND REASONS

[1] The applicant is applying for the rescission of the order issued against him in 2005 prohibiting him from instituting or continuing proceedings in the Federal Court, except by leave of the chief judge or a judge designated by the chief judge.

[2] Mr. Duterville was convicted of second-degree murder in 1990. He received a life sentence with the possibility of parole after 15 years.

[3] In 2005, Mr. Duterville filed an application for judicial review of a decision rendered by D. Ian Glen, then Chairperson of the Parole Board of Canada (formerly the National Parole Board), to deny him parole. Mr. Duterville also applied for a writ of *habeas corpus*, and all other applicable remedies under subsection 24(1) of the *Canadian Charter of Rights and Freedoms*. The applicant made seven other requests to the Court within a short space of time.

[4] On May 10, 2005, I declared him a vexatious litigant. My order prohibited him from continuing with proceedings he had previously instituted, except by leave of the Court, in accordance with section 40 of the Act.

[5] Section 40 of the *Federal Courts Act* reads 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

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

the application and on any application made under subsection (3).

à cette occasion de même que lors de toute contestation portant sur l'objet de la requête.

(3) A person against whom a court has made an order under subsection (1) may apply to the court for rescission of the order or for leave to institute or continue a proceeding.

(3) Toute personne visée par une ordonnance rendue aux termes du paragraphe (1) peut, par requête au tribunal saisi de l'affaire, demander soit la levée de l'interdiction qui la frappe, soit l'autorisation d'engager ou de continuer une instance devant le tribunal.

(4) If an application is made to a court under subsection (3) for leave to institute or continue a proceeding, the court may grant leave if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.

(4) Sur présentation de la requête prévue au paragraphe (3), le tribunal saisi de l'affaire peut, s'il est convaincu que l'instance que l'on cherche à engager ou à continuer ne constitue pas un abus de procédure et est fondée sur des motifs valables, autoriser son introduction ou sa continuation.

(5) A decision of the court under subsection (4) is final and is not subject to appeal.

(5) La décision du tribunal rendue aux termes du paragraphe (4) est définitive et sans appel.

[6] Under subsection 40(3) of the Act, the applicant can apply for a rescission of the order against him or for leave to institute specific proceedings before the Court.

[7] The Court must examine the grounds identified by the applicant for rescission of the order prohibiting him from instituting proceedings, and not the merit of the underlying application. Such a motion is essentially challenging the validity of the order (*Chavali v. Law Society of Upper Canada*, [2003] OJ No. 5818 (Ont Sup Ct J), at paragraph 8).

[8] The applicant can therefore argue that the order was obtained on grounds of fraud or should be changed based on facts discovered after the order was made (*Riad v. Aziz*, 2014 ONSC 5223, at paragraph 16). The Court can take the applicant's conduct into account, and specifically, whether or not it has improved (*Mohammed v. Goodship*, 2013 ONSC 4942, at paragraph 31).

[9] The applicant's written arguments relate to his discontent with Maître Victorin's work, and his allegation that Maître Victorin and Correctional Service Canada plotted to make a mockery of his rights. His allegations are vague and unclear and are not related to the notice of motion.

[10] Mr. Duterville's motion contains no grounds to question the validity of the order issued against him on May 10, 2005.

[11] The facts therein are not supported by evidence. It simply recounts events that occurred prior to his last transfer, over which the Court had no control. It reveals no valid action. The applicant's tendency to make unfounded allegations against the adverse party, and his claims that counsel in this case are plotting against him clearly demonstrate that he has not changed and remains a vexatious litigant. Therefore, he has failed to convince the Court that he would not abuse his right to institute proceedings without having to obtain prior leave. I conclude that the order should be maintained.

[12] For these reasons, the applicant's motion is dismissed.

JUDGMENT

THE COURT ORDERS that the motion for rescission of the order be dismissed.

Under section 40 of the *Federal Courts Act*, R.S.C. 1985, chapter F-7, the Court orders that no further proceedings be instituted by the applicant in this Court and that any proceedings previously instituted by the applicant in this Court not be continued, except by leave of this Court.

“Danièle Tremblay-Lamer”

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-674-05

STYLE OF CAUSE: ALBERT DUTERVILLE v. D. IAN GLEN, PIERRE
BERNIER, YVES FAFARD, THE ATTORNEY
GENERAL OF CANADA

PLACE OF HEARING: MONTRÉAL, QUEBEC

DATE OF HEARING: APRIL 21, 2016

JUDGMENT AND REASONS TREMBLAY-LAMER J.

DATED: APRIL 25, 2016

APPEARANCES:

Albert Duterville

FOR THE APPLICANT
(ON HIS OWN BEHALF)

Claudia Gagnon

FOR THE RESPONDENTS

SOLICITORS OF RECORD:

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FOR THE RESPONDENTS