

Federal Court



Cour fédérale

Date: 20190523

Docket: T-1331-17

Citation: 2019 FC 723

Ottawa, Ontario, May 23, 2019

PRESENT: Mr. Justice James W. O'Reilly

BETWEEN:

MARTHA COADY

Applicant

and

THE ATTORNEY GENERAL OF CANADA

Respondent

ORDER AND REASONS

I. Overview

[1] The Attorney General of Canada (AGC), on her own behalf and in support of the respondents, the Office of the Information Commissioner (OIC), the Commissioner of the Royal Canadian Mounted Police (RCMP), and the Librarian and Archivist of Canada (LAC), seeks an order striking an application by Ms Martha Coady on the grounds that it is an abuse of process. In her application, Ms Coady seeks to quash a decision of the OIC refusing to reopen or

commence an investigation in respect of a complaint Ms Coady lodged with the OIC in 2010. Ms Coady also seeks access to information about an investigation conducted by the RCMP into alleged public corruption and money laundering from 1993 to 2003. The file is currently in the hands of LAC.

[2] The AGC argues that Ms Coady's application amounts to an abuse of process because she is pursuing the wrong government departments, her application has been brought in the wrong forum, and she is out of time. Further, the AGC submits that Ms Coady's application is bound to fail because she has not actually requested LAC for access to the material she seeks, and the RCMP's denial of access to the file was made in 2009; judicial review from the RCMP's decision is no longer available. Finally, the AGC argues that the style of cause in this matter should be amended to name the Attorney General of Canada as respondent.

[3] More particularly, and more gravely, the AGC also seeks to declare Ms Coady a vexatious litigant under s 40(1) of the *Federal Courts Act*, RSC 1985, c F-7 (see Annex for provisions cited), which would require her to seek leave of the Court before filing or continuing any legal proceedings. The AGC relies on the fact that Ms Coady, over the years, has instituted numerous proceedings that were found to be meritless or duplicative, has failed to pay numerous cost awards against her, has been reprimanded by various courts and the Law Society of Upper Canada, was disbarred in Ontario, and has been enjoined from commencing certain proceedings in Ontario and Quebec.

[4] Ms Coady argues that the material filed by the AGC is erroneous. She insists that her lack of success in other proceedings does not mean that her application here is vexatious. She also submits that she has a statutory right to receive the information she seeks. Ms Coady also contends that she is paying the costs of past judgments against her. Finally, Ms Coady suggests that the AGC's motions should be held in abeyance until the Federal Court of Appeal rules on her appeal of Justice Luc Martineau's decision.

[5] On this motion, it is not my role to rule definitively on the merits of Ms Coady's application for judicial review. Rather, it is to consider whether the AGC's motions to strike Ms Coady's application and to declare Ms Coady a vexatious litigant are well-founded. At the hearing of the AGC's motion, Ms Coady requested an adjournment. In lieu of an adjournment, I granted Ms Coady permission to file additional material after the hearing, which she has done.

II. Background

[6] Having reviewed the various other proceedings in which Ms Coady has been involved and the material filed on these motions, it appears that Ms Coady's main objective is to obtain a copy of a file relating to an RCMP investigation, known as Project Anecdote, into alleged money laundering. The investigation was closed in 2003. Ms Coady believes that the file contains information relating to her ex-husband and that her name also appears in the file.

[7] The AGC outlines the various unsuccessful efforts Ms Coady has made to obtain the file, including a 2008 request in the course of her disciplinary proceedings before the Law Society of

Upper Canada, and a 2009 request to the RCMP under the *Access to Information Act*, RSC 1985, c A-1. She has filed various proceedings in this Court (*Coady v Director of Public Prosecutions*, 2008 FC 1064; *Coady v Director of Public Prosecution*, 2011 FC 1009). She has also filed proceedings in the Superior Court of Justice of Ontario (*Coady v Law Society of Upper Canada*, 2007 CanLII 52786 (ONSC DC); *Coady v Law Society of Upper Canada*, 2014 ONSC 5711; *Coady v Scotiabank*, 2015 ONSC 6837). The Superior Court found her to be a vexatious litigant in 2003, a decision upheld by the Court of Appeal for Ontario (see *Coady v Boyle*, [2003] OJ No 5161; *Coady v Boyle*, 2005 CanLII 15456 (ONCA)).

[8] Ms Coady's most recent application seeks judicial review of a 2017 decision of the OIC refusing to reopen Ms Coady's request for access to the Project Anecdote file or to investigate Ms Coady's 2010 complaint about the closing of that file. She states that she wrote to the OIC in the spring of 2017 pointing out the errors that had been made in the handling of her earlier complaint, and that her inquiry resulted in the decision of which she now seeks judicial review.

A. *Should Ms Coady's application be struck?*

[9] The AGC argues that Ms Coady's application amounts to an abuse of process and should be struck under Rule 221(1)(c) of the *Federal Courts Rules*, SOR/98-106. The AGC says that Ms Coady seeks a copy of the Project Anecdote file from the wrong government institutions. Her application names the OIC, but the OIC does not have possession of the file. She has also targeted LAC, the custodian of the file, but has never actually requested LAC to provide it. Ms Coady also seeks redress from the RCMP, who refused her access to the file in 2009. The AGC argues that she cannot now challenge this decision, because her application is out of time. Ms

Coady has not responded directly to the AGC's legal submissions. Rather, she emphasizes the facts that she says underpin her legal entitlement to access to the Project Anecdote file. In particular, she points to evidence that her name was associated with the file. She also notes that she never received a final decision from the OIC on her 2010 complaint until 2017, so her present application is not out of time. Finally, Ms Coady maintains that the AGC has not addressed the mandatory language of the *Access to Information Act* that requires disclosure of the file that she seeks.

[10] As mentioned, Ms Coady also requests that any decision in response to these motions should await the outcome of her appeal before the Federal Court of Appeal.

[11] I agree with the AGC that this application should be struck, and that the style of cause should be amended to name the AGC as respondent.

[12] Ms Coady's request to the RCMP for access to the Project Anecdote file was denied in 2009. She complained to the OIC but, according to the July 14, 2017 decision, Ms Coady effectively abandoned her efforts to obtain the file in 2011 by failing to respond to communications from the OIC's investigator inviting Ms Coady to modify or renew her request to the RCMP. The OIC closed the file in November 2011. In fact, in correspondence with the Department of Justice in 2011, Ms Coady acknowledged that on February 23, 2011 she received a negative decision from the OIC in respect of her complaint, a decision that could have been judicially reviewed.

[13] Ms Coady was also aware as early as 2011 that the file was transferred to LAC and that, to obtain access to it, she would have to make an ATIP request to LAC. She has not done so.

[14] This application appears to be an ill-framed, oblique attempt by Ms Coady to obtain relief that she has previously been denied or failed to pursue in a timely fashion. Her application purports to seek judicial review of a July 2017 decision of the OIC refusing to reopen her file or to conduct a new investigation into her 2010 complaint. However, her main objective is to have the Project Anecdote file produced to the Court, relief that simply cannot be obtained by way of her application. She continually refers to the Project Anecdote file as being the “tribunal record” which must be produced on an application for judicial review. But the Project Anecdote file has nothing to do with the decision under review here – a decision of the OIC. The OIC does not even possess the file, so it cannot be considered part of the record of the tribunal whose decision is sought to be reviewed.

[15] As for her request that I await the outcome of her appeal to the Federal Court of Appeal, I note that her appeal has now been dismissed, and a cost award made against her. The Court of Appeal agreed with this Court that Prothonotary Tabib did not err in dismissing Ms Coady’s motion seeking a copy of the Project Anecdote file (*Coady v Canada (Royal Mounted Police)*, 2019 FCA 102).

B. *Should Ms Coady be declared a vexatious litigant?*

[16] The AGC points out that findings by other courts that a litigant is vexatious carry considerable weight in determining whether a person has abused the courts' processes (citing *Canada v Olumide*, 2017 FCA 42 at para 37). This, according to the AGC, applies to Ms Coady.

[17] Further, the AGC notes that Ms Coady's request for a copy of the Project Anecdote file has already been turned down three times, her various procedural motions have all been denied, all of her appeals from court rulings have been dismissed, cost awards against her have not been paid, her allegations of bad faith are all unsubstantiated, her conduct has been reprimanded by various courts and the Law Society of Upper Canada, and the latter body has found her to be ungovernable.

[18] It is important to recall that courts must "treat all litigants – even vexatious ones – with dignity and respect." After all, a vexatious litigant "may be an employee or volunteer, a friend or acquaintance, an aunt or uncle, a parent or child – and a good one too" (*Olumide*, above, at para 39).

[19] I would also observe that the vocabulary we use may sometimes be unfortunate. The term "vexatious" is used in our Rules, so it must be interpreted and applied in motions such as this one. But we do not use that term the way it is often meant in common speech. "Vexatious" can mean, simply, "irritating" or "annoying" or "bothersome." That is not at all what we mean when we use that term in this context. We generally apply it only when a litigant has placed a

substantial strain on the resources of our judicial system without a discernably valid purpose, or when he or she has persistently flouted the rules, orders, or authority of the Court.

[20] Ms Coady's conduct before me was actually courteous and respectful. Still, she characterizes the AGC's motions as a personal attack on her. That is not how I see it. The AGC seeks to prevent the consumption of scarce public resources on matters that do not merit the Court's attention; it is not personal.

[21] The AGC is essentially arguing that Ms Coady, rather than accepting no as an answer to her many requests, continues to institute new proceedings in different packaging in an effort to obtain what she has already been properly denied. This, according to the AGC, places a substantial burden on the respondents to her various motions and applications, as well as on the courts.

[22] The order that the AGC seeks must be issued sparingly or else persistent but legitimate efforts to obtain justice may be cut off precipitously. The main question is whether the litigant has relentlessly initiated proceedings in the face of clearly negative rulings on the same issue, or otherwise refuses to respect the court's authority (*Olumide*, above, at para 22).

[23] A declaration under s 40(1) does not prevent individuals from obtaining justice in this Court or deprive anyone of his or her legal rights. It simply enables the Court to screen requests more closely to stop them from consuming public resources in disproportionate measure.

[24] Here, it is clear that Ms Coady has made numerous attempts in different fora in a variety of ways to obtain the information she seeks. In my view, however, her conduct has now crossed the line; her efforts have become vexatious, in the legal sense. She apparently refuses to accept the validity of the rulings against her, as well the consequences of the courts' decisions.

[25] Ms Coady sought and was denied the Project Anecdote file three times by this Court and at least as many times in other courts. Yet, while she has framed this application in a new way, she essentially seeks the same relief. She has also made unsubstantiated allegations that lawyers acting for the AGC have lied to Ontario courts, made misrepresentations in a Quebec court, refused to obey court orders, displayed a lack of candour in this Court and in the Federal Court of Appeal, and, now, by this motion, that they have abused the processes of this Court. She also submits that the Canadian Judicial Council improperly dismissed her complaint against an Ontario judge who, she says, was implicated in the Project Anecdote investigation.

[26] Ms Coady has failed to comply with cost awards against her, orders that, at least in part, were meant to discourage her initiation of unmeritorious proceedings or to curtail her inappropriate conduct in court. They have not had the desired effect. For example, an elevated cost award was made against her in 2012 "to censure the conduct of the Plaintiff (Martha Coady) in this proceeding" (*Coady v Shannon*, 2012 CanLII 97530, at p 15 (ON SCSM)). Similarly, where "Ms Coady chose to employ prolix and obstructionist tactics in the hearing of the applications," a hearing panel of the Law Society of Upper Canada imposed costs on her of close to \$200,000.00, a sum that the panel characterized as being modest in the circumstances, given

her behaviour in the proceedings (*Law Society of Upper Canada v Coady*, 2010 ONLSHP 4, at para 37, 38).

[27] Ms Coady states that her wages have been garnished since 2015 at the rate of 35% to offset the various cost awards against her, but she has not provided any documentary evidence to support that claim. At present, in respect of proceedings in Ontario, Ms Coady currently owes more than \$250,000.00.

[28] Significantly, Ms Coady has already been declared a vexatious litigant in Ontario, and to be ungovernable by the Law Society of Upper Canada.

[29] Accordingly, the relief sought by the AGC on this motion is the last remaining form of deterrent available.

[30] I am satisfied that the evidence cited by the AGC as described above supports the AGC's motion, and I will, therefore, grant the order sought.

III. Conclusion and Disposition

[31] I find that Ms Coady's application for judicial review should be struck as an abuse of process. I am also satisfied that Ms Coady should be declared a vexatious litigant in the Federal Court and, therefore, that she should not be permitted to initiate or continue any proceedings without leave of the Court. I will grant the AGC costs in the amount of \$500.00.

ORDER IN T-1331-17

THIS COURT ORDERS that:

1. The application for judicial review is struck.
2. No further proceedings may be instituted or continued in the Federal Court by Ms Martha Coady, without leave of the Court.
3. The style of cause is amended by substituting the Attorney General of Canada as respondent.
4. Costs are payable by Ms Coady to the Attorney General of Canada in the amount of \$500.00.

"James W. O'Reilly"

Judge

Annex

Federal Courts Act, RSC
1985, c F-7

Loi sur les Cours fédérales,
LRC (1985), ch F-7

Vexatious proceedings

Poursuites vexatoires

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.

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.

Federal Courts Rules,
SOR/98-106

Règles des Cours fédérales,
DORS/98-106

Motion to strike

Requête en radiation

221(1) On motion, the Court may, at any time, order that a pleading, or anything contained therein, be struck out, with or without leave to amend, on the ground that it

221 (1) À tout moment, la Cour peut, sur requête, ordonner la radiation de tout ou partie d'un acte de procédure, avec ou sans autorisation de le modifier, au motif, selon le cas :

...

[...]

(c) is scandalous, frivolous or vexatious,

c) qu'il est scandaleux, frivole ou vexatoire;

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-1331-17

STYLE OF CAUSE: MARTHA COADY v THE ATTORNEY GENERAL OF CANADA

PLACE OF HEARING: OTTAWA, ONTARIO

DATE OF HEARING: APRIL 23, 2018

ORDER AND REASONS: O'REILLY J.

DATED: MAY 23, 2019

APPEARANCES:

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