

Federal Court



Cour fédérale

Date: 20191217

Docket: T-2084-18

Citation: 2019 FC 1614

Ottawa, Ontario, December 17, 2019

PRESENT: The Honourable Mr. Justice Zinn

BETWEEN:

THE ATTORNEY GENERAL OF CANADA

Applicant

and

JOHN MARK LEE JR.

Respondent

JUDGMENT AND REASONS

[1] This is an application under subsection 40(1) of the *Federal Courts Act*, RSC 1985, c F-7, brought by and with the consent of the Attorney General of Canada [Canada] to declare that John Mark Lee Jr. is a vexatious litigant. Canada asks that the Court issue an Order prohibiting Mr. Lee from instituting or continuing litigation in this Court, except with leave of the Court. It further requests that the Order stipulate that leave should not be granted unless Mr. Lee is

represented by a lawyer, or in the alternative, that he meet conditions equivalent to those imposed in *Wilson v Canada (Revenue Agency)*, 2017 FC 817 [*Wilson*].

[2] Subsection 40(1) provides as follows:

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.	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.
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[3] The Federal Court of Appeal in *Canada v Olumide*, 2017 FCA 42 [*Olumide*] at paragraph 17 described that the ability to issue a vexatious litigant declaration “reflects the fact that the Federal Courts are community property that exists to serve everyone, not a private resource that can [be] commandeered in damaging ways to advance the interests of one.” As noted at paragraph 19, the “Federal Courts have finite resources that cannot be squandered.”

Is an Oral Hearing Required?

[4] Canada by letter dated May 29, 2019, asked that this application be determined based on the parties' written records; however, it acknowledged that the Court had full discretion in the matter. Mr. Lee responded that he would “require” an oral hearing in Edmonton, and further

indicated that he would be asking the Court to subpoena a number of witnesses to testify at the hearing.

[5] For the reasons that follow, I have concluded that an oral hearing is not required in this matter.

[6] The present application is brought by way of an originating application under section 40 of the *Federal Courts Act*. In *Bernard v Canada (Attorney General)*, 2019 FCA 144 [*Bernard*] at paragraphs 12-13, the Federal Court of Appeal held that there is no right to an oral hearing for applications under section 40.

[7] In *Bernard*, the Federal Court of Appeal denied a party's request for an oral hearing because she did not offer specific reasons why one was necessary, apart from stating that the application was important to her. Justifying its decision, the Federal Court of Appeal stated at paragraph 14 that:

The material is straight-forward and clear, and like many of the motions we hear, can be dealt with efficiently and expeditiously in writing. This exercise of discretion is consistent with the mandate in Rule 3 [of the *Federal Court Rules*, SOR/98-106] that we exercise our discretion to further “the just, most expeditious and least expensive determination of every proceeding on its merits.”

[8] As was the case in *Bernard*, Mr. Lee offers no specific reason why this application requires an oral hearing. Although he advises the Court that he would like to call four witnesses to testify, he provides no explanation why these witnesses are important or what they might contribute. Two of the named witnesses have already provided written affidavits in this

application. Their affidavits, like the majority filed by Mr. Lee, set out personal grievances (such as access to the prison library resources) that are irrelevant to the question of whether Mr. Lee is a vexatious litigant. Many of the affidavits state that Mr. Lee has helped and advised inmates with legal matters. I doubt that the witnesses he wishes to call would provide any new or helpful evidence in this application.

[9] Since the commencement of this application in December 2018, Mr. Lee has had many opportunities to gather evidence and prepare his arguments. He filed 16 third-party affidavits and wrote two lengthy affidavits of his own. On August 14, 2019, Prothonotary Ring directed the Court Registry to accept Mr. Lee's second affidavit, despite the Registry's reservations about allowing an additional affidavit. I also note that the Federal Court has been lenient with Mr. Lee, granting him time extensions and allowing him to file deficient documents. Mr. Lee has not been deprived of the opportunity to make his case, notwithstanding the disadvantages he may face as an inmate housed at a federal penitentiary.

[10] The written records are extensive. In addition to Mr. Lee's documents, Canada's evidentiary record exceeds 1900 pages. This application can be determined on the record before the Court. There is no need to hold an oral hearing in this matter.

The Merits of this Application

[11] Mr. Lee is serving a life sentence for first-degree murder and has been in federal institutions in Alberta, British Columbia, and Ontario since 1986. He is currently an inmate at the Bowden Institution in Alberta.

[12] The Federal Court of Appeal in *Canada (Attorney General) v Fabrikant*, 2019 FCA 198 [Fabrikant] at paragraphs 25-26 identified certain indicia or “badges” of vexatiousness to guide section 40 determinations. The Respondent in *Fabrikant*, like Mr. Lee, was an inmate at a federal penitentiary. The indicia or badges identified by the Federal Court of Appeal, were not said to be an exhaustive list, but include: commencing proceedings with dubious or non-existent merit, making unfounded allegations of bias, illegality, incapacity and fraud, attempting to file documents not in accordance with the *Federal Courts Rules*, filing many motions and other irregular filings, and failing to pay amounts awarded as costs.

[13] The Federal Court of Appeal in *Olumide* at paragraph 42 added that in determining whether a litigant is vexatious, the Federal Court may look to findings of vexatiousness made by other courts, and they “can be given much weight.”

[14] Also of note, the Federal Court of Appeal at paragraph 40 of *Olumide* observed that extensive reasons are not required or encouraged on applications to declare a litigant to be vexatious:

Often little need be said in support of a finding of vexatiousness [...]. In assessing adequacy, appellate courts review the reasons offered against the record and the submissions made [...]. If the record contains detail, the reasons need only summarize or say a few things. Frequently in cases such as these, less is more.
[citations omitted]

[15] The Federal Court was encouraged at paragraph 39 of *Olumide* to continue its practice of providing restrained and appropriate reasons “clinical in tone and minimalist in approach.”

[16] In 12 years, Mr. Lee has brought 19 matters before this Court; none successfully:

1. July 31, 2006: claim seeking \$1 million against Correctional Service of Canada [CSC] and others for poor prison conditions, breaches of statute and policy, abuse of authority, procedural fairness, duty of care, and breach of confidentiality. Discontinued on February 14, 2008. No costs awarded.
2. July 31, 2006: claim seeking \$1 million and a reduction in his sentence against the CSC and others for the CSC's denial of a complaint about a staff member, a CSC's urinalysis test conducted on Mr. Lee, the CSC's alleged reference to Mr. Lee as a sexual offender and having a "history of assaultive behaviour". Discontinued on February 14, 2008. No costs awarded.
3. July 31, 2006: claim seeking \$100,000, cosmetic surgery, mood lighting, a pet rabbit, free pizza, and other food items against the CSC and others, for the CSC's decision not to fund a health awareness campaign, for exposure to second-hand smoke, and the CSC's decision to not provide him with free cough drops. Discontinued on February 14, 2008. No costs awarded.
4. July 31, 2006: claim seeking \$1.1 million against the CSC and others for the decision of the Deputy Warden refusing Mr. Lee's idea of starting a food truck business within the institution. Discontinued on February 14, 2008. No costs awarded.

5. August 30, 2006: claim seeking \$10 million against the CSC and others, for a parole officer's decision to refuse to admit Mr. Lee to a counseling course. Discontinued on February 14, 2008. No costs awarded.
6. October 3, 2006: claim seeking \$100,000, free groceries, and telephone calls against the CSC and others, for the CSC's decision to refuse to provide Mr. Lee with "homeopathic remedies", failure to fill a painkiller prescription, refusal of a package, refusal of a visit, and cancellation of a booking at a visit facility. The Statement of Claim was struck on May 15, 2007, with \$500 in costs. Appealed unsuccessfully.
7. January 31, 2008: motion for an Order dispensing with court filing fees. Dismissed on May 13, 2008, with \$100 in costs.
8. January 31, 2008: motion for an Injunction, Writ, Discretion and a contempt of court Order. Dismissed on May 13, 2008, with \$250 in costs.
9. January 31, 2008: motion for an extension of time to file documents. Dismissed on May 13, 2008. No costs awarded.
10. November 18, 2014: Application for Judicial Review concerning the general conditions at the Bowden Institution and naming the Warden and the Commissioner of Corrections as respondents. Struck without leave to amend on March 10, 2015, with \$500 in costs awarded.

11. October 14, 2014: claim seeking \$61,000 against several CSC employees for alleged abuse of authority and misfeasance in public office. Struck without leave to amend on February 9, 2015, with \$750 in costs awarded.
12. January 20, 2017: Notice of Application and Motion Record for an Order granting extension of time to commence an Application for Judicial Review of a decision of the Parole Board of Canada [PBC] and an Order waiving court filing fees. Dismissed on March 21, 2017. Mr. Lee filed a notice of appeal. The appeal was dismissed summarily by Federal Court of Appeal on November 22, 2017.
13. January 30, 2017: motion for a waiver of filing fees to apply for Judicial Review of a decision of the Warden to suspend Mr. Lee's employment in the Bowden Institution kitchen. Dismissed on March 21, 2017, with \$140 in costs awarded.
14. January and February 2017: motion for extension of time to file an Application for Judicial Review of the decision of the Warden to suspend Mr. Lee's employment in the Bowden Institution kitchen. Dismissed on May 30, 2017, with \$140 in costs awarded.
15. December 19, 2017: motion for reconsideration of the Federal Court Order dated March 21, 2017 (item 13 above). Dismissed on March 15, 2018, with \$420 in costs awarded.
16. November 22, 2017: motion for extension of time to file a motion to reconsider the Federal Court's Order, dated May 30, 2017 (item 14 above). Dismissed on January 11,

2018, with \$140 in costs awarded. Mr. Lee filed notice of appeal and motion for extension of time. Dismissed by the Federal Court of Appeal on May 14, 2018.

17. April and May 2018: motion seeking extension of time to file an Application for Judicial Review of a PBC decision. Dismissed on August 17, 2018, with \$420 in costs awarded.

18. May 1, 2018: claim seeking \$50,000 against the Warden and a CSC employee at the Bowden Institution for negligence, misfeasance, and malicious prosecution. Struck without leave to amend on August 21, 2018, with \$750 in costs awarded.

19. August 27, 2018: Application for Judicial Review of a decision of the PBC that denied Mr. Lee an escorted temporary absence to attend the funeral of a friend. Mr. Lee is seeking \$2,200 in costs. Application is stayed pending payment of \$1,300 for security for costs and ordering costs of \$420 against Mr. Lee.

[17] In addition to matters brought before this Court, Mr. Lee has a history of litigation before courts in Alberta, British Columbia, and Ontario. The Alberta Court of Queen's Bench recently issued a vexatious litigant order against Mr. Lee: *Lee v Canada (Attorney General)*, 2018 ABQB 464. That resulted after the Court, faced with a fulsome record of Mr. Lee's litigation in many courts, on its own motion launched an inquiry as to whether he was a vexatious litigant: See *Lee v Canada (Attorney General)*, 2018 ABQB 40.

[18] My review of the record in this matter leads me to conclude that at paragraph 46 of its Memorandum, Canada has accurately summarized Mr. Lee's litigation behaviour before this Court:

Before this Court, Lee: is unable to frame his pleadings in a coherent manner; ignores filing and service *Rules*; fails to pursue litigation on a timely basis; brings extension of time applications that do not succeed; and routinely unsuccessful[ly] seeks to bring appeals from decisions dismissing his claims. Further, he fails to honour court-ordered cost awards in earlier proceedings. He ignores court orders and clear directions from the Court. He makes unsubstantiated allegations of impropriety against the opposite party, legal counsel, or the Court.

[19] Mr. Lee responds that he began much of his past litigation because he did not properly understand the law. He attributes his lack of knowledge to not having an adequate law library as well as to interference by prison staff who, he alleges, have kept him from his documents and library computers. He suspects that Canada is bringing the present application just as he "has finally been able to become knowledgeable on how to file in the Federal Court." He says that his litigation before the Federal Court was not intended to cause hardship to anyone and that he has always tried to resolve disputes informally. However, Mr. Lee submits that his litigation was necessary to protect himself from harassment and to secure his liberties.

[20] The Court is conscious of the fact that Mr. Lee is incarcerated with restricted access to library materials and other resources. While a party is entitled to act personally, that is not a license to spawn unmeritorious litigation in several Canadian courts. Such conduct adversely affects the ability of the Court to respond to those who call upon its resources.

[21] I am satisfied that Mr. Lee is a vexatious litigant and an Order under section 40 of the *Federal Courts Act* is appropriate.

[22] Canada requests, pursuant to subsection 40(3) of the *Federal Courts Act*, that the Court require Mr. Lee to seek leave before initiating or continuing a proceeding before the Federal Court. It also requests that the Court impose an additional requirement on Mr. Lee, as has been done in previous vexatious litigant proceedings: See *Lee* at paragraph 17; *Fabrikant* at paragraph 9; *Wilson* at paragraphs 64-65, 70-77. Specifically, Canada asks that the Court impose a requirement that Mr. Lee obtain legal representation (as defined in section 11 of the *Federal Courts Act*) in order to seek leave to commence a proceeding. Alternatively, Canada requests that Mr. Lee be required to pay his previous costs awards in full before any leave request is considered or that he obtain a preliminary order for permission to seek leave if the previous costs awards have not yet been paid.

[23] An Order similar to the requested alternative was made by this Court in *Wilson* and it is appropriate in light of Mr. Lee's actions here and in other courts.

JUDGMENT IN T-2084-18

THIS COURT'S JUDGMENT is that:

1. This application is granted;
2. Mr. Lee is prohibited from continuing or commencing any proceeding in the Federal Court until such time as he has:
 - i. Paid in full all outstanding costs awards in all existing and prior proceedings; or
 - ii. Obtained an Order from the Federal Court giving him permission to bring an application under subsection 40(3) of the *Federal Courts Act* for rescission or leave to institute or continue a proceeding, which Order shall be obtained through a preliminary motion in writing accompanied by an affidavit not exceeding five pages in length, outlining the merits of Mr. Lee's proposed proceeding or step in a proceeding, together with a copy of this Judgment and Reasons. Mr. Lee's motion materials must be in accordance with the formatting requirements of the *Federal Courts Rules*. If they are not, or if they exceed the length limit imposed by these Reasons, they will not be accepted for filing. If the Court is satisfied that the proposed proceeding or step in a proceeding has merit, it will direct Mr. Lee to serve and file a full application under subsection 40(3) of the *Federal Courts Act*; and
3. Costs for this application are fixed at \$500 and are to be paid forthwith by Mr. Lee to Canada.

"Russel W. Zinn"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET: T-2084-18

STYLE OF CAUSE: THE ATTORNEY GENERAL OF CANADA v JOHN
MARK LEE JR

**MOTION DEALT WITH IN WRITING, WITHOUT APPEARANCE OF THE
PARTIES, AT OTTAWA, ONTARIO**

JUDGMENT AND REASONS: ZINN J.

DATED: DECEMBER 17, 2019

WRITTEN SUBMISSIONS BY:

Darcie Charlton
Aminollah Sabzevari

FOR THE APPLICANT

John Mark Lee Jr.

RESPONDENT
(ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

Attorney General of Canada
Department of Justice Canada
Prairie Region
Edmonton, Alberta

FOR THE APPLICANT

- Nil -

SELF-REPRESENTED RESPONDENT