

Federal Court



Cour fédérale

**Date: 20211122**

**Docket: T-1289-20**

**Citation: 2021 FC 1278**

**Ottawa, Ontario, November 22, 2021**

**PRESENT: THE CHIEF JUSTICE**

**BETWEEN:**

**BELL STANKO BIRKICH**

**Plaintiff**

**and**

**SURVEYOR GENERAL DIVISION – VICTORIA,  
(ALL NORTH) TRUE -898-, MADDOX -484-,  
(BROWNE) JOHNSON -604-, UNDERHILL -799-, FORTIS BRITISH  
COLUMBIA ENERGY INC., DUGAS LAW, DAVID BROOKSHILL,  
DEPUTY SURVEYOR GENERAL – BCLTA, CATES EPP FORD ONIEN,  
GUILD-YULE, (RUSSELL) JASON SHORTT -770-, RUNNALLS DENBY -873-,  
MONASHEE -856-, RODNEY CHORNEYKO AND SHK LAW**

**Defendants**

**ORDER AND REASONS**

## I. Introduction

[1] The Plaintiff, Mr. Birkich, has filed numerous legal proceedings in relation to a boundary dispute involving property in Falkland, British Columbia. After his actions in the first two of those proceedings were dismissed by the Supreme Court of British Columbia [BCSC], he was declared a vexatious litigant by that Court [the **Vexatious Litigant Order**].<sup>1</sup> Undaunted, he has since filed several proceedings in this Court and, indeed, has filed additional proceedings in the BCSC.

[2] Two of the proceedings initiated in this Court, including the within action, have been struck. Nevertheless, the Defendant Monashee Land Surveying and Geomatics Ltd. (named as Monashee -856- [Monashee] in this proceeding) seeks an Order preventing Mr. Birkich from instituting additional proceedings in the future without leave of the Court [the **Requested Vexatious Proceedings Order**].

[3] For the reasons that follow, that request will be granted.

## II. Background

[4] Mr. Birkich is the son of Pina Birkich. In the 1990s, she and her husband (who is now deceased) purchased the land that has been at the heart of the various proceedings described

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<sup>1</sup> According to the Vexatious Litigant Order, the Plaintiff is also known as William Stanley Birkich.

above and below. According to documentation filed on this Motion, Mr. Birkich has lived on that land from time to time for approximately the last twenty years.

[5] Monashee is a firm of professional engineers and professional land surveyors in British Columbia.

[6] Between July 2009 and October 2020, Mr. Birkich filed six separate claims before the BCSC, either in his own name or in his mother's name. Each of those claims have directly or indirectly involved the disputed boundary and allegations that are substantially similar to those made in the within action. In each case, his claims were dismissed, struck without leave to amend, or declared a nullity by the BCSC.

[7] In a separate proceeding brought by neighbouring property owners in 2017, the BCSC issued an Order prohibiting Mr. Birkich from entering into their property and awarding punitive damages against him in the amount of \$20,000: *Laponder v Birkich*, 2017 BCSC 1890, at paras 64–65. It then issued the Vexatious Litigant Order later that year: *Birkich et al v Laponder et al* (22 December 2017), Salmon Arm 17907 (BCSC).

[8] In 2018, Mr. Birkich was convicted of mischief by willfully damaging a fence of a value in excess of \$5,000 and of breaching the conditions of his release. His appeal of those convictions was unsuccessful: *R v Birkich*, 2019 BCSC 2047; *R v Birkich*, 2019 BCSC 2048.

[9] After his fifth proceeding before the BCSC was set aside as a nullity, Mr. Birkich began to file proceedings in this Court. He filed the first three in October 2020 (Court files T-1206-20, T-1238-20 and the present proceeding, T-1289-20); followed by a fourth in December 2020 (Court file T-1479-20): see Appendix A to these reasons.

[10] In the present Motion, Monashee sought the Requested Vexatious Proceedings Order as well as various other forms of relief, including an Order that the Statement of Claim in the within action be struck and dismissed without leave to amend. The latter Order was granted by Prothonotary Aalto: *Birkich v Surveyor General Division – Victoria and Others* (21 September 2021), Toronto T-1289-20 (FC) [*T-1289-20 Strike Order*]. The same day, Prothonotary Aalto issued a similar Order in Court file T-1479-20: *Birkich v Surveyor General Natural Resources Canada and Others* (21 September 2021), Toronto T-1479-20 (FC).

[11] In the Order issued in the present proceeding, Prothonotary Aalto described Mr. Birkich's claims as being "virtually incomprehensible and compris[ing] nothing but gibberish about land surveys and malice and fraudulent actions of the Defendants." After adding that the claims were "utter nonsense," "an abuse of process" and "scandalous," he struck the Statement of Claim in its entirety without leave to amend. He then adjourned the portion of this Motion concerning the Requested Vexatious Proceedings Order, to be dealt with in writing by a judge: *T-1289-20 Strike Order*, above, at pp 3–5.

[12] Prothonotary Aalto made similar observations in his above-mentioned Order in Court file T-1479-20.

[13] Mr. Birkich's actions in Court files T-1206-20 and T-1238-20 remain "live."

[14] I pause to note that Mr. Birkich was given an extension of time to June 25, 2021 to serve and file motion records in response to (i) the present Motion, and (ii) several Motions to Strike that were brought by a number of the other Defendants in this proceeding. However, he failed to do so. His subsequent attempt to file a motion record dated July 20, 2021, seeking a further extension of time, was not accepted for filing by Prothonotary Aalto. Accordingly, these reasons will only consider the arguments that have been advanced by Monashee in support of the Requested Vexatious Proceedings Order.

### III. Relevant Legislation

[15] Monashee seeks the Requested Vexatious Proceedings Order pursuant to section 40 of the *Federal Courts Act*, RSC 1985, c F-7 [the "Act"]. Subsections 40(1) and (2) provide as follows:

**Vexatious proceedings**

**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

**Poursuites vexatoires**

**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

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.

**Attorney General of Canada**

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

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.

**Procureur général du Canada**

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

[16] The consent described in subsection 40(2) has been provided by the Attorney General of Canada on this Motion.

[17] The Vexatious Litigant Order issued by the BCSC was made pursuant to section 18 of the *Supreme Court Act*, RSBC 1996, c 443, which provides as follows:

**Vexatious proceedings**

**18** *If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.*

(Emphasis added to reflect similarities between this provision and subsection 40(1) of the Act.)

IV. **Assessment**

[18] Section 40 of the Act provides an important mechanism by which the Court can restrain vexatious behaviour. Its inclusion in the Act reflects Parliament’s recognition that such behaviour can impose inordinate costs and other burdens on other parties to proceedings, as well as on the Court itself. To the extent that such behaviour typically requires a much greater allocation of scarce judicial and registry resources than would otherwise be required, it diverts those resources away from other meritorious proceedings. In so doing, it limits access to justice by others. In brief, “[e]very moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant”: *Canada v Olumide*, 2017 FCA 42, at para 19 [**Olumide**]; see also *Coady v Canada (Attorney General)*, 2020 FCA 154 at paras 22–24 [**Coady**].

[19] The behaviour contemplated by section 40 includes bringing multiple proceedings that are meritless or that seek to reassert or relitigate previously determined claims; filing frivolous, unnecessary or otherwise inappropriate motions; flouting procedural rules; and ignoring court orders and directions: *Olumide*, above, at paras 21–22, 25 and 32; *Coady*, above, at para 21.

[20] In considering whether to issue an Order under section 40, the Court need not entirely “reinvent the wheel.” It may consider and give much weight to a finding of vexatiousness by another court pursuant to a similarly worded provision: *Olumide*, above, at para 37; *Coady*, above, at para 29. The Vexatious Litigant Order issued by the BCSC falls into this category: see paragraph 17, above, and *Simon v Canada (Attorney General)*, 2019 FCA 28 at para 25 [**Simon**].

[21] Moreover, it is not necessary for the Court to conduct an extensive assessment before invoking the powers provided by section 40. Instead, it may summarize the most relevant facts.

Similarly, the party requesting an Order under section 40 need not provide “an encyclopedia of every last detail about the litigant’s litigation history.” Instead, “focused, well-chosen evidence” can suffice: *Olumide*, above, at paras 36 and 40.

[22] In my view, the evidence Monashee has adduced meets this description and provides a sufficient basis for granting the present Motion. In summary:

- i. There is very substantial overlap between the claims made in the within action and those filed in Mr. Birkich’s fifth proceeding in British Columbia (BCSC Court file S1910754), which was set aside as a nullity by Chief Justice Hinkson (see paragraph 9, above, and Appendix B hereto). The Defendants named in the latter proceeding include all of the Defendants named in the present proceeding, as well as all but one of the Defendants named in the other proceedings filed in this Court by Mr. Birkich.
- ii. There is also substantial overlap in the claims made by Mr. Birkich in the four proceedings that he filed in this Court. More specifically:
  - a) The allegations made at paragraphs 1 and 3 of the very short (three-paragraph) Statement of Claim made in Court file T-1206-20 are virtually identical to those made at paragraphs 1 and 5 of the very short (five-paragraph) Statement of Claim made in Court file T-1238-20. Two of the Defendants in the former action are also Defendants in the latter action.



- b) The allegations described immediately above are also virtually identical to those made at paragraphs 16 and 17 of the Statement of Claim in the within action, albeit against different Defendants.
- c) The allegations made at paragraphs 1, 2, 8–9 and 16 of the Statement of Claim in the within action are virtually identical to those made at paragraphs 3, 1, 16 and 2, respectively, of the Statement of Claim in Court file T-1479-20, albeit against different Defendants.
- iii. With the exception of two of the proceedings that remain “live” in this Court (files T-1206-20 and T-1238-20), the claims made by Mr. Birkich in this Court and in the BCSC have been repeatedly dismissed, struck without leave to amend, or declared a nullity by the BCSC and this Court.
- iv. The claims made in the within action have been found to be “utter nonsense,” an “abuse of process” and “scandalous”: see paragraph 11, above.
- v. Similar findings were made in the course of striking Mr. Birkich’s proceeding in Court file T-1479-20: see paragraph 12, above.
- vi. After the first two proceedings filed by Mr. Birkich before the BCSC were dismissed, that court issued a Vexatious Litigant Order, injunctive relief and punitive damages against him: see paragraphs 1 and 7, above. I consider that the

Vexatious Litigant Order merits material weight in this proceeding: *Olumide*, above, at para 37; *Coady*, above, at paras 28–29; *Tonner v Lowry*, 2016 FC 230 at para 24. See also paragraph 20 above.

[23] Having regard to the foregoing, I am satisfied that Mr. Birkich has persistently instituted vexatious proceedings in this Court, and before in the BCSC. I also find that Mr. Birkich’s behaviour reflects a level of ungovernability and harmfulness to the court system and its participants that justifies regulating his future actions before the Court in the manner contemplated by subsection 40(1) of the Act: *Simon*, above, at paras 11 and 26.

[24] Consequently, I consider it appropriate to Order that no further proceedings be instituted in this Court by Mr. Birkich, also known as William Stanley Birkich, or in his mother’s name, except by leave of this Court. For the same reasons, I will also Order that no proceeding previously instituted by Mr. Birkich in this Court may be continued by him, except by leave of this Court. Stated differently, the proceedings that remain “live” (Court files T-1206-20 and T-1238-20) shall be stayed and cannot be continued without the express leave of this Court: *Simon*, above, at para 30. For greater certainty, Mr. Birkich will be prohibited from filing any document or procedure, either in his own name or through a representative, except by leave of the Court.

[25] In its Notice of Motion, Monashee also requested an Order requiring that Mr. Birkich pay costs to Monashee forthwith, in a lump sum amount of \$3,000. In the alternative, it requested costs in an amount fixed by the Court and payable forthwith.

[26] In granting the part of this Motion relating to Monashee's request that the Statement of Claim in this proceeding be struck and dismissed without leave to amend, Prothonotary Aalto awarded Monashee costs in the amount of \$1,500. He proceeded to specify that costs relating to Monashee's request for the Requested Vexatious Proceedings Order would be determined by the judge dealing with that part of Monashee's Motion.

[27] Having regard to the conclusion I have reached at paragraph 23 above, and to the considerations set forth at paragraph 22, I consider it appropriate to award Monashee \$1,500 in respect of the part of its Motion that is currently before me. Together with the \$1,500 that Prothonotary Aalto has already awarded to Monashee in respect of the rest of this Motion, my award will have the effect of providing Monashee with the full \$3,000 that it sought on this Motion. I consider this result to be particularly appropriate in light of the importance of deterring future vexatious proceedings in this Court

V. **Conclusion**

[28] For the reasons set forth above, the Order requested by Monashee pursuant to subsection 40(1) of the Act will be granted, albeit in the terms that I have described.

[29] By way of concluding observation, I consider it appropriate to reiterate that section 40 provides a very important tool for dealing with vexatious behaviour. However, its potential for assisting the Court to address such behaviour is limited by the requirement in subsection 40(2) to obtain the consent of the Attorney General of Canada. The Court has long considered this requirement to have presented a significant legal and practical impediment to addressing the

mischief that subsection 40(1) was intended to address. This requirement is particularly questionable in proceedings where the Attorney General of Canada is a party, or represents a party. Such proceedings represent the vast majority of proceedings in this Court.

**ORDER in T-1289-20**

**THIS COURT'S ORDER** is that:

1. The request of the Defendant, Monashee Land Surveying and Geomatics Ltd. [*Monashee*] for relief pursuant to subsection 40(1) of the *Federal Courts Act* is granted, albeit in the following form:
  - a. No further proceedings shall be instituted in this Court by Mr. Birkich, also known as William Stanley Birkich, or in his mother's name, except by leave of this Court.
  - b. No proceeding previously instituted by Mr. Birkich in this Court may be continued by him, except by leave of this Court.
  - c. For greater certainty, Mr. Birkich is prohibited from filing any document or procedure, either in his own name or through a representative, except by leave of this Court.
2. Mr. Birkich shall pay costs to Monashee in the lump sum amount of \$1,500.

"Paul S. Crampton"  
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Chief Justice

## APPENDIX “A” – SUMMARY OF THE PLAINTIFF’S PROCEEDINGS

File No.	Relevant Dates	Events
BCSC Action No. 44538	July 3, 2009	Statement of Claim & Writ of Summons filed. (Exhibit “A”)
	August 18, 2009	Action dismissed by Order of the Court. (Exhibit “B”)
BCSC Action No. 14950	September 16, 2012	Amended Notice of Civil Claim filed. (Exhibit “C”)
	December 9, 2013	Claim dismissed by Order of the Court, with special costs against the Plaintiff. (Exhibit “D”)
BCSC Action No. 53953 – which became Action No. 17907	January 6, 2017	Notice of Civil Claim filed. (Exhibit “E”)
	November 28, 2017	Pursuant to Order of the Master, action was transferred, file number changed. (Exhibit “G”)
	December 22, 2017	Plaintiff was declared a vexatious litigant. (Exhibit “H”)
BCSC Action No. 17852	March 17, 2017	Neighbouring property owners (Laponders and McCaughan) filed a Notice of Civil Claim for injunctive relief and damages. (Exhibit “J”)
	September 28, 2017	Plaintiff filed a Third Party Notice, repeating allegations from November 3, 2017 Notice of Civil Claim. (Exhibit “K”)
	October 6, 2017 & October 23, 2017	Injunction against the Plaintiff was ordered, with an award for damages and punitive damages in favour of the neighbours. (See <i>Laponder v Birkich</i> , 2017 BCSC 1888; <i>Laponder v Birkich</i> , 2017 BCSC 1890)
BCSC Action No. 54502	November 3, 2017	Notice of Civil Claim filed. (Exhibit “F”)
	June 7, 2018	Notice of Civil Claim was struck without leave to amend and dismissed. (“Exhibit I”)
BCSC Action No. S1910754	September 25, 2019	Notice of Civil Claim filed. Substantially similar to the allegations in T-1289-20. (Exhibit “L”)
	October 23, 2019	Claim set aside as a nullity, <i>Ex Mero Motu</i> . (Exhibit “M”)
FC T-1206-20	October 9, 2020	Statement of Claim filed. (Exhibit “N”)

	June 18, 2021	Motion materials returned to the Plaintiff and rejected for filing. Motion dismissed. (See Court file)
	As of November 18, 2021	File still active. Last significant event was the close of pleadings.
<b>FC</b> T-1238-20	October 16, 2020	Statement of Claim filed. (Exhibit "O")
	June 10, 2021	Motion materials rejected for filing. Motion dismissed. (See Court file)
	As of November 18, 2021	File still active. Last significant event was the close of pleadings.
<b>BCSC</b> Action No. S125431	October 27, 2020	Statement of Claim filed by the Plaintiff set aside as a nullity on the Court's own motion. (Exhibits "S" & "T")
<b>FC</b> T-1289-20	October 27, 2020	Statement of Claim filed. (See Statement of Claim in Bench Book)
	September 21, 2021	Statement of Claim struck in its entirety without leave to amend, with costs to the Defendants. Motion to declare the Plaintiff a vexatious litigant is adjourned to be heard by a judge in writing. (See Order in Bench Book)
<b>FC</b> T-1479-20	December 7, 2020	Statement of Claim filed. (Exhibit "P")
	September 21, 2021	Statement of Claim struck in its entirety without leave to amend, with costs to the Defendants. (See Order in Bench Book)

**APPENDIX “B” – SUMMARY OF OVERLAP BETWEEN SUBMISSIONS IN  
BCSC ACTION NO. S1910754 & FC T-1289-20**

<b>Paragraph reference in this Action under “Material Facts”</b>	<b>Paragraph reference in Vancouver Action No. S1910754</b>
1	4
2	8
3	9
4	10
5	83
6	84
7	Photo at page 3
8	85
9	86
10	56 [Part 3]
11	75 [Part 3]
12	27 [Part 3]
14	98
15	84 [Part 3]
17	61



**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-1289-20

**STYLE OF CAUSE:** BELL STANKO BIRKICH v SURVEYOR GENERAL  
DIVISION – VICTORIA ET AL

**MOTION IN WRITING CONSIDERED AT OTTAWA, ONTARIO PURSUANT TO  
RULE 369 OF THE *FEDERAL COURTS RULES***

**ORDER AND REASONS:** CRAMPTON C.J.

**DATED:** NOVEMBER 22, 2021

**WRITTEN REPRESENTATIONS BY:**

Bell Stanko Birkich

FOR THE PLAINTIFF,  
ON HIS OWN BEHALF

Janet L. Gartner

FOR THE DEFENDANT,  
MONASHEE -856-

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