Federal Court  Cour fédérale

Date: 20250808

Docket: 25-T-67

Citation: 2025 FC 1357

Ottawa, Ontario, August 8, 2025

PRESENT: The Honourable Mr. Justice Duchesne

BETWEEN:

VOLODYMYR HRABOVSKYY

Applicant

and

DIPLOMATIC LAW DIVISION (GLOBAL AFFAIRS CANADA)

Respondent

ORDER AND REASONS

[1] The Applicant was declared a vexatious litigant by this Court's decision published as *Hrabovskyy v. Canada*, 2017 FC 355 in docket no.: T-1532-15. The Court made the following Order in finding that Mr. Hrabbovskyy was a vexatious litigant:

> **"THIS COURT DECLARES** the applicant a vexatious litigant; and
>
> **THIS COURT ORDERS that:**
>
> 1. no further proceeding may be instituted by the applicant without previous authorization of this Court;

> 2. no further proceeding may be accepted by the Registry for filing without previous authorization of this Court;
>
> 3. the applicant's present proceeding is dismissed as vexatious and an abuse of process without the possibility of amendment; and
>
> 4. costs fixed in the amount of $2,000.00 to be paid to the respondent forthwith."

[2] Mr. Hrabovskyy was later declared a frivolous litigant by the Superior Court of Quebec in *Hrabovskyy v. Attorney General of Canada*, 2021 QCCS 597. At para 36 of its decision, the Superior Court of Quebec reviewed and considered three exhibits that were before it but were not produced on this motion. The Superior Court of Quebec noted:

> [36] In April and May 2019, Mr. Hrabovskyy unsuccessfully sought permission to file a new case against the Federal crown.[43] The basis of the new filing involved access to documents and damages for failure to deliver diplomatic bags.

[3] Mr. Hrabovskyy now seeks leave of this Court to commence an application for judicial review pursuant to sections 41, 44, 47, 49 and 51 of the *Privacy Act, RSC* 1985, c. P-21 and sections 18.5 and 18.1 of the *Federal Courts Act*, RSC 1985, c. F-7 [the FCA] against the Diplomatic Law Division of Global Affairs Canada. His intended application for judicial review follows the Office of the Privacy Commissioner's rejection of his complaint against Global Affairs Canada [GAC] in which he had alleged that it had contravened the access provisions of the *Privacy Act* by failing to disclose information Mr. Hrabovskyy has sought to obtain.

[4] Mr. Hrabovskyy's motion is dismissed for the reasons that follow.

I. **The Applicable Law**

[5] Mr. Hrabovskyy must meet the requirements of subsection 40(4) of the FCA in order to be successful on this motion. Section 40 of the FCA provides as follows:

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.
Attorney General of Canada	***Procureur général du 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).	**(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.
Application for rescission or leave to proceed	***Requête en levée de l'interdiction ou en autorisation***
(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.
Court may grant leave	***Pouvoirs du 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.
No appeal	***Décision définitive et sans appel***
(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] A vexatious litigant declaration does not deprive the vexatious litigant from accessing the Court. The vexatious litigant may access the Court, but they will be regulated when they attempt to do so. Part of their regulation as a prospective litigant is that they must seek the Court's leave before starting any new proceeding. The Court may exercise its discretion pursuant to subsection 40(4) of the FCA and grant leave to the vexatious litigant if the issue raised in the intended proceeding is *bona fide* and not doomed to fail. If the Court grants leave, it can also impose terms providing for court supervision or court management to ensure the proceeding progresses properly (*Simon v. Canada (Attorney General),* 2019 FCA 28, at paras 11 and 12).

[7] The vexatious litigant has the onus of demonstrating that leave should be granted to them. That onus may be discharged by demonstrating on the balance of probabilities through evidence provided in a supporting affidavit that their intended proceeding is not an abuse of process, and that there are reasonable grounds for the intended proceeding (*Bernard v. Canada (Professional Institute of the Public Service)*, 2020 FCA 211, at para 11 [*Bernard*]; subsection 40(4) FCA).

[8] The vexatious litigant must also assure the Court that they will prosecute their proceeding in an acceptable way. This assurance should be provided in the supporting affidavit filed on the motion for leave (*Bernard* at para 10). The assurance provided by the vexatious litigant will be more persuasive if it includes credibility enhancing particulars and promises that include, but are not limited to, a reasoned litigation plan, legal representation by a trustworthy agent or counsel, particulars and promises to access and rely upon legal advice as the proceeding progresses, and, more generally, promises to comply with as well as a demonstration of compliance with the *Rules* and any order or direction of the Court (*Bernard* at paras 11 and 12).

[9] The Court must consider whether there are reasonable grounds for the proceeding. The Court's consideration should be guided by the well-known and oft applied standard of whether an application is doomed to fail (*Bernard*, at paras 14 to 19; *Wenham v. Canada (Attorney General)*, 2018 FCA 199, at paras. 22 to 33; *Canada (National Revenue) v. JP Morgan Asset Management (Canada) Inc.*, 2013 FCA 250, at paras 47 to 50, 66 to 70 [*JP Morgan*]). While the vexatious litigant is not required to prove the substance of their intended proceeding on a motion for leave pursuant to subsection 40(4) of the FCA, they must set out in their supporting affidavit a reasonable factual and legal basis for the proceeding (*Bernard* at para 17).

[10] The Court must also consider whether the proceeding would be an abuse of process. The Court's consideration should be guided by the principles applicable to the doctrine of abuse of process and its related doctrine of *res judicata* and the rule against collateral attack (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at paras 22 to 55) [*Toronto (City)*].

[11] The vexatious litigant must establish both requirements set out in subsection 40(4) of the FCA in addition to satisfying the Court that the proceeding will be prosecuted reasonably. They must show that their intended proceeding is, a) not an abuse of process, and b) that there are reasonable grounds for their proceeding. A failure to establish either puts an end to the analysis and leave is to be refused (*Bernard* at paras 20 and 21). The Court may yet exercise its discretion to refuse leave even if the vexatious litigant satisfies both requirements of subsection 40(4) of the FCA (*Bernard* at para 22).

II. **Analysis**

A. ***Mr. Hrabovskyy's Supporting Affidavit is Insufficient for Leave to be Granted***

[12] Mr. Hrabovskyy's motion record is 156 pages. It is comprised of a table of contents, a Notice of Motion, three documents titled "affidavit of documents" with a limited number of attached documents, a draft Notice of Application and written representations.

[13] While Mr. Hrabovskyy's motion record is structurally compliant with Rule 364 of the *Rules*, it is substantively non-compliant with Rules 80, 81, 359, 363 and 364 of the *Rules*.

[14] The Notice of Motion is discursive, sets out text in various font types of various point sizes, occasionally underlined, occasionally bolded, occasionally italicized, without any decipherable rule being applied to emphasize text in one instance or another. The parties named in the Notice of Motion as parties to the intended proceedings are not the same parties as are named in the proposed Notice of Application that is included in the motion record. The Notice of

Motion is clearly non-compliant with Rules 65, 66, and 67(3) and fails to comply with Rule 359 or Form 359. Finally, the Notice of Motion filed sets out alleged legal grounds as it pertains to the basis for the intended application for judicial review but does not address any of the matters contemplated by subsection 40(4) of the FCA which must, of necessity be grappled with on this motion.

[15] The three affidavits filed in support of the motion for leave are titled “affidavit of documents”. The affidavits set out a style of cause that is different from the style of cause set out in the Notice of Motion. The affidavits themselves copy some of the content that is found in Form 223, but without being a complete copy of the Form’s largely boilerplate content. Form 223 is the form to be used when an affidavit of document is to be served pursuant to Rule 223 and sets out the content of an affidavit of documents that is to be served after the close of pleadings in an action governed by Part 4 of the *Rules*. Neither Rule 223 nor Form 223 find application on a motion for leave pursuant to subsection 40(4) of the FCA, in an application governed by Part 5 of the *Rules* more generally, or on a motion governed by Part 7 of the *Rules* as is the case here.

[16] Each of the affidavits contain a list of documents that include, by way of example only, documents such as a document titled “Liability for Undelivered Correspondence and Discrimination based on the Property and Interference with Prevention of Delivery of Correspondence or Freedom of Movement of Communication by Duplicates through Formal Channels (ex, Diplomatic/Consular/ex); Destruction of the Reputation; Denial of Justice”, emails apparently dated in 2015, and documents that appear to have been sent to other parties or filed

with the Court in the proceeding bearing docket no.: T-1532-15. The Court notes that at least some of the documents listed by Mr. Hrabovskyy are documents that he had prepared, served and/or filed in the T-1532-15 proceeding that gave rise to his declaration as a vexatious litigant. Other documents such as an apparent printout of the HCCH Details page with respect to Canada's central authorities within the meaning of the *Convention on the Service Abroad of Judicial and Extrajudicial Documents in Civil or Commercial Matters* signed at The Hague on November 15, 1965 [the *Hague Convention on Service*] and a copy of Mr. Hrabovskyy's original application to the Office of the Privacy Commissioner are also listed and included in the motion record along with various other listed emails and documents.

[17] None of the three affidavits filed by Mr. Hrabovskyy contain evidence that is admissible on this motion. None of the documents listed by Mr. Hrabovskyy in his three affidavits are admissible on this motion as they were not led into evidence in accordance with Rule 81(1) of the *Rules*.

[18] The material filed by Mr. Hrabovskyy suggests that he intends to represent himself should leave be granted. They also suggest that he has taken no steps or insufficient steps to acquaint himself with the *Rules* or to follow them for the purposes of this motion or of his proposed Notice of Application; in addition to the deficiencies in the materials filed for this motion, a cursory review of the proposed Notice of Application included in Mr. Hrabovskyy's motion record reflects a proposed originating document that does not comply with Rule 301 of the *Rules* that contains mostly arguments rather a complete and concise statement of the grounds intended to be argued.

[19] Mr. Hrabovskyy has not led evidence by way of a supporting affidavit within the meaning of Rule 363 that assures the Court that he will prosecute his intended application in an acceptable way. There is no proposed litigation plan, no suggestion that Mr. Hrabovskyy would be represented by a solicitor of record or would seek appropriate advice as the matter proceeds, and no promise to comply with the *Rules* or the Court's orders or directions.

[20] The deficiencies in Mr. Hrabovskyy's affidavit evidence filed in support of his motion and Mr. Hrabovskyy's failure to comply with the *Rules* do not satisfy me on the balance of probabilities that Mr. Hrabovskyy will conduct his intended proceeding in a reasonable manner should leave be granted as sought.

B. ***The Proposed Proceeding***

[21] The proposed Notice of Application included in the motion record describes the relief sought as follows:

> Release of Documents (Property) Detained by Respondent, while those documents (certificates and proof of services) were designated to Applicant (while Respondent acted as an intermediary in services/transmission as a carrier).

[22] The proposed Notice of Application sets out as follows in connection with the relief sought:

> This is an application for judicial review in respect of the denial to release documents (proof of service and certificates) designated to me by Germany (19.05.2015) and Norway (13.07.2015 and 22.07.2015), while the Diplomatic Law Division was responsible to deliver duplicates through formal channels of transmission in accordance with the service conventions through a special "postal"

> channels (ex., alternative, derogatory, or consular/diplomatic channels).
>
> DECISION (15.04.2025): The Commission rendered the decision on 15.04.2025 referring to ss 19(1)(a), 19(2), and 21 *Privacy Act;* note: the Commission does not have the jurisdiction to render the decision in terms of treaties (service conventions), such Hague Convention, Universal Postal Convention, Vienna Convention on Consular Relations,(…) also no document from a foreign state was provided either (concealment or making-up data).

[23] Mr. Hrabovskyy clarified during the hearing of this motion that what he seeks is the production of either proof of service or proof of Norway's and Germany's refusal to accept service of documents that he sought to serve upon them in or about 2015 through the *Hague Convention on Service*. He believes that those documents were mentioned in emails dated May 19, 2015, July 13, 2015, and July 22, 2015. The Court notes that these emails were at issue in his previous proceeding in docket no.: T-1532-15.

[24] I have reviewed the proposed Notice of Application holistically and practically without fastening onto matters of form in order to gain an appreciation of its essential character (*JP Morgan* at para 50). In doing so, I have given little weight to many of the too numerous references in Mr. Hrabovskyy's proposed Notice of Application to international conventions and provisions of the *Civil code of Quebec* that distract from the essence of the grounds alleged in support of his intended proceeding.

[25] The proposed Notice of Application sets out the larger context that Mr. Hrabovskyy had attempted to serve documents upon Germany and upon the University of Bergen in Norway in 2015, presumably, in accordance with *Hague Convention on Service*. Mr. Hrabovskyy does not

allege the method, means or documents he originally had sought to serve upon Germany or on the University of Bergen or the Kingdom of Norway in 2015.

[26] The emails identified and set out in the text of the proposed Notice of Application reflect that the documents that Mr. Hrabovskyy had sought to serve were not, in fact, served upon the party or parties he had identified as persons or entities to be served. The emails appear to explain the basis upon which service was either not effected or prevented, and these emails appear to be in Mr. Hrabovskyy's possession as they are identified in the lists included in his non probative affidavits of documents. These emails also relate back to Mr. Hrabovkyy's original 2015 originating document filed in docket no.: T-1532-15 related to his efforts to have the Canadian government commence proceedings against the state of Norway at the International Court of Justice.

[27] Mr. Hrabovskyy also makes allegations with respect to the differences between the delivery of duplicate parcels, documents inside parcels, and the form attached to duplicate parcels pursuant to the *Universal Postal Convention* (Seoul, 1994), and that GAC's Diplomatic Law Division has functions in connection with the service of documents pursuant to the *Hague Convention on Service* that are analogous to functions exercised by Canada Post. He argues that GAC acts as an intermediary akin to the postal service when it acts as a central authority pursuant to the *Hague Convention on Service*.

[28] Mr. Hrabovskyy relies on article 6 of the *Hague Convention on Service* for the proposition that he, as the "applicant" referred to in the article, should have been forwarded a

certificate of non-service generated by Germany and by Norway through GAC in or about 2015 that set out the reasons why the documents he had sought to serve were not served. He further alleges that the documents at issue are his personal property as they are destined to be delivered to him, and that the failure to provide the sought documents to him engages the Crown's potential liability pursuant to section 13 of the *Crown Liability and Proceedings Act*.

[29] Mr. Hrabovskyy alleges that sections 19 and 21 of the *Privacy Act* are inapplicable to his request because the delivery of a certificate as contemplated by article 6 of the *Hague Convention on Service* is but a procedural step in GAC's performance of its duties pursuant to the *Hague Convention on Service*.

C. ***The Proposed Proceeding is an Abuse of Process***

[30] While some of what is alleged in Mr. Hrabovskyy's proposed Notice of Application may be arguable and not necessarily doomed to fail taken in isolation, consideration of the larger context in which the proposed Notice of Application fits reflects that the proposed proceeding is an abuse of process.

[31] The arguments advanced and explained at paragraphs 8 to 19 of his written representations on this motion set out Mr. Hrabovskyy's past allegations against lawyers, Canada and members of the judiciary in matters of perjury, fraud and the fabrication of evidence, and more generally reflect that what he seeks through his intended proceeding is the taking of a step in the continuation of his past unsuccessful proceedings before this Court between 2015 and

2017. He appears to rely on those past allegations in support of this intended proceeding instead of resiling from them.

[32] The step sought to be taken though the intended proceeding also appears to be similar in nature to the proceedings the Superior Court of Quebec described in its 2021 decision. The Superior Court of Quebec noted then that Mr. Hrabovskyy had been unsuccessful in seeking permission to file a new proceeding against the Federal Crown in connection with access to documents and the failure to deliver diplomatic bags. While perhaps not identical to the intended proceeding described by the Superior Court of Quebec, Mr. Hrabovskyy's intended proceeding in this case appears to be the relitigation of well trodden territory pertaining to the service of documents on foreign states in 2015, albeit initiated through the processes of the *Privacy Act* instead of directly.

[33] I must conclude that Mr. Hrabovskyy's intended proceeding as articulated in his proposed Notice of Application is an abuse of process (*Boily v. Canada*, 2019 FC 323, at paras 66 and 67, aff'd 2021 FCA 23; *Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, at para 37). Mr. Hrabovskyy has not led evidence to persuaded me otherwise despite arguing in written representations in reply that there is no nexus between his intended proceeding and his past proceedings. The absence of admissible evidence or probative evidence supporting Mr. Hrabovskyy's motion and arguments is determinative on this motion.

D. ***There Are No Reasonable Grounds for the Proposed Proceeding***

[34] While some of what is alleged in Mr. Hrabovskyy's proposed Notice of Application may be arguable and not necessarily doomed to fail taken in isolation, Mr. Hrabovskyy's failure to lead affidavit evidence in support of his intended proceeding leads me to conclude that he has not established a reasonable factual and legal basis for the proceeding on a balance of probabilities as is required by the jurisprudence (*Bernard* at para 17).

[35] I therefore find that there are no reasonable grounds established by Mr. Hrabovskyy for his proposed proceeding.

III. **Conclusion and Costs**

[36] Mr. Hrabovskyy has not met his burden pursuant subsection 40(4) of the FCA. His motion for leave to commence an application of judicial review following the Privacy Commissioner's decision of April 15, 2025, in file PA-069573 is therefore dismissed.

[37] The responding party has sought its costs of this motion pursuant to Rule 401 of the *Rules*. Pursuant to my discretion as set out in Rule 400 of the *Rules*, and considering the factors set out in Rule 400(3), Rule 400(4) and Rule 407, the responding party shall have its party-and-party costs of this motion in accordance with the mid-point of column III of the table to Tariff B, for items 5 and 6.

ORDER in 25-T-67

THIS COURT ORDERS that:

1. The Moving Party Mr. Hraboskyy's motion for leave pursuant to subsection 40(4) of the *Federal Courts Act* is dismissed.

2. The Moving Party Mr. Hrabovskyy shall pay the Attorney General of Canada his costs of this motion and appearance on the motion which are hereby fixed $ 1,080.00.

"Benoit M. Duchesne"
Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	25-T-67
STYLE OF CAUSE:	VOLODYMYR HRABOVSKYY v. DIPLOMATIC LAW DVISION (GLOBAL AFFAIRS CANADA)
PLACE OF HEARING:	ZOOM VIDEOCONFERENCE
DATE OF HEARING:	JUNE 17, 2025
ORDER AND REASONS:	DUCHESNE, J.
DATED:	AUGUST 8, 2025

APPEARANCES:

Volodymyrr Hrabovskyy	FOR THE APPLICANT (SELF-REPRESENTED)
Jasmine Kavadias Landry	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Montréal, Québec	FOR THE RESPONDENT