Federal Court  Cour fédérale

Date: 20130613

Docket: T-312-13

Citation: 2013 FC 643

BETWEEN:

LAWYERS' PROFESSIONAL INDEMNITY COMPANY

Applicant

and

ANTHONY COOTE

Respondent

REASONS FOR ORDERS

HUGHES J.

[1] The Applicant Lawyers' Professional Indemnity Company (LawPRO) has brought a motion under section 40 of the *Federal Courts Act*, RSC 1985, c. F-7, to declare that the Respondent Anthony Coote is a vexatious litigant, and for consequent relief. The Respondent Coote has brought two motions also heard at this time, one purports to be a *Charter* challenge and a request to declare LawPRO to be vexatious, the other seeks to set aside or vary previous Orders of Manson J. and Boivin J of this Court. I will issue one set of Reasons dealing with all three motions and separate

Orders with respect to each motion. In brief, I will grant the LawPRO motion to declare Anthony Coote a vexatious litigant and dismiss the two motions brought by Anthony Coote.

THE PARTIES

[2] The Applicant Lawyers' Professional Indemnity Company (LawPRO) is an insurer representing lawyers in Ontario against whom claims have been made by various persons. LawPRO has been named as a party defendant in an action brought in this Court by the Respondent Coote (action T-1083-12); as a party respondent in a proposed proceeding in this Court brought by Anthony Coote (12-T-19); and was an Applicant in proceedings in the Ontario Superior Court of Justice (CV-10-3731-00), in which Coote was declared to be a vexatious litigant; with a subsequent appeal to the Ontario Court of Appeal; and a purported appeal as of right attempted to be brought by Coote in the Supreme Court of Canada.

[3] The Respondent Anthony Coote (Coote), also known as Antoine Coote or Caufield Anthony St. Orbain Coote, is an individual presently residing in Mississauga, Ontario. He is the father of Twain Coote (Coote Jr.) who was the subject of proceedings taken under the *Immigration and Refugee Protection Act*, SC 2001, c. 27 (IRPA) and is currently in detention awaiting removal to Jamaica. Those proceedings appear to be the genesis of the many proceedings brought by his father in the Ontario Courts and in this Court.

THE ISSUES IN THE LAWPRO MOTION

[4] The issue presented by LawPRO on its motion is whether, under the circumstances of this case, Coote should be declared to be a vexatious litigant, and what consequential relief should be provided.

[5] The Respondent Coote challenges this motion and raises a number of issues, which can be distilled to the following:

1. Has the proper consent of the Attorney General been obtained?

2. Should this proceeding have been brought by way of application and not a motion?

3. Should a court seal have been affixed to the Notice of Motion?

4. Has the Respondent Coote been properly served?

5. Does LawPRO have standing to bring these proceedings?

6. Was Coote justified in bringing all the various proceedings, including appeals and requests for directions, that he has?

[6] I will deal with the Respondent's issues 1 to 5 first, then collectively deal with the Applicant's issue and the Respondent's issue 6 as Issue #6.

ISSUE # 1: HAS THE PROPER CONSENT OF THE ATTORNEY GENERAL BEEN OBTAINED?

[7] Section 40 of the *Federal Courts Act* provides that an application under that section can only be made with the consent of the Attorney General. A consent signed by the Assistant Deputy Attorney General, Litigation, on the 23rd day of January, 2013 has been provided in the Record.

[8] The Respondent Coote has objected to this consent, pointing out that it has been signed by the Assistant Deputy and not the Attorney General. This objection overlooks the provisions of subsection 24(2) of the *Interpretation Act*, RSC 1985, c. I-21, which states:

24. (2) Words directing or empowering a minister of the Crown to do an act or thing, regardless of whether the act or thing is administrative, legislative or judicial, or otherwise applying to that minister as the holder of the office, include	*(2) La mention d'un ministre par son titre ou dans le cadre de ses attributions, que celles-ci soient d'ordre administratif, législatif ou judiciaire, vaut mention :*
(a) a minister acting for that minister or, if the office is vacant, a minister designated to act in the office by or under the authority of an order in council;	*a) de tout ministre agissant en son nom ou, en cas de vacance de la charge, du ministre investi de sa charge en application d'un décret;*
(b) the successors of that minister in the office;	*b) de ses successeurs à la charge;*
(c) his or their deputy; and	*c) de son délégué ou de celui des personnes visées aux alinéas a) et b);*
(d) notwithstanding paragraph (c), a person appointed to serve, in the department or ministry of state over which the minister presides, in a capacity appropriate to the doing of the act or thing, or to the words so applying.	*d) indépendamment de l'alinéa c), de toute personne ayant, dans le ministère ou département d'État en cause, la compétence voulue.*

[9] The Federal Court of Appeal held that these provisions apply in circumstances such as the present. In *King v Canada (Minister of Human Resources and Social Development*), 2009 FCA 105, Sexton JA wrote at paragraphs 16 and 17:

> *16 Paragraph 24(2)(d) states that where a statute grants a Minister the power to make a decision, that power may also be exercised by department officials who are appointed to do so. That is, such an official may make a binding decision herself, without consulting with the Minister and without any personal intervention by the Minister, and without delivering advice to anyone.*
>
> *17 The operation of paragraph 24(2)(d) was explained by Justice Létourneau in Canada (Human Resources Development) v. Wiemer (1998), 228 N.R. 341 at para. 11 (F.C.A.), another case concerning a decision made under the CPP:*
>
> > *There is no requirement under the Act that approval of an application for a division of unadjusted pensionable earnings be given by the Minister personally. Under subsection 24(2) of the Interpretation Act, R.C.S. 1985, c. I-21, powers given to a minister to do an act or a thing can be exercised by a person appointed to serve in the department over which the minister presides in a capacity appropriate to the doing of the act. Indeed, section 24 merely recognizes in legislation an existing practice dictated by the diversity and complexities of modern public administrations. Prior to the enactment of this provision, our Courts had recognized the existence of a principle of implied delegation of ministerial powers in order to ensure a proper and efficient functioning of public administrations. Recently, the Supreme Court of Canada reasserted the principle when Major J., writing for the Court, concluded that the express delegation or devolution of powers to department officials found in s. 7 of the Fisheries Act may appear unnecessary today. "When power is entrusted to a Minister of the Crown, Major J. wrote, the act will generally be performed not by the Minister but by delegation to responsible officials in his department".*

[10] I find that the consent of the Assistant Deputy, as provided in the Record herein, satisfies the requirement of subsection 40(2) of the *Federal Courts Act*.

ISSUE #2: SHOULD THESE PROCEEDINGS HAVE BEEN BROUGHT BY APPLICATION AND NOT MOTION?

[11] This proceeding was brought by way of a Notice of Motion. I find that this was appropriate.

[12] The Federal Court of Appeal, in *Nelson v Canada (Customs & Revenue Agency)*, 2003 FCA 127, dealt with the issue as to whether a motion or application was the proper way to proceed under section 40 of the *Federal Courts Act*, and held that a motion was appropriate. Sharlow JA for the Court wrote at paragraph 22:

> *22 Mr. Nelson argues that an order under section 40 of the Federal Court Act must be made on the basis of an originating application, not an interlocutory motion as was done here. There is no merit to that argument. Section 40 of the Federal Court Act simply refers to an "application". That term is sufficiently broad to include originating applications and motions.*

ISSUE #3: SHOULD A COURT SEAL HAVE BEEN AFFIXED TO THE NOTICE OF MOTION?

[13] There is no requirement that the Notice of Motion herein be issued under the seal of the Court.

ISSUE #4: HAS THE RESPONDENT COOTE BEEN PROPERLY SERVED?

[14] At the hearing, the Respondent Coote objected that he had not been properly served with the Applicant's Notice of Motion and other documents. Coote has filed an Appearance and materials responding to the motion, as well as his own motions. He is, and for a considerable time has been, fully aware of all the documents provided by LawPRO herein. I find no merit to this objection raised at the hearing.

ISSUE #5: DOES LAWPRO HAVE STANDING TO BRING THESE PROCEEDINGS?

[15] Section 40 of the *Federal Courts Act* does not specify who may bring proceedings under that provision. I find that LawPRO, being a party in this Court, as well as the Ontario Courts and

Supreme Court of Canada in proceedings brought by or involving Coote, has sufficient interest in the relief sought so as to have standing to bring this proceeding.

ISSUE #6: DO THE FACTS AND LAW JUSTIFY AN ORDER DECLARING COOTE TO BE A VEXATIOUS LITIGANT AND TO RPOVIDE CONSEQUENT RELIEF?

[16] I will turn first to the jurisdiction of the Federal Court to deal with a request that a person be declared to be a vexatious litigant and to provide consequent relief. That jurisdiction is set out in section 40 of the *Federal Courts Act*, RSC 1985, c. F-7:

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.*
Marginal note: 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).*	*Note marginale :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.*
Marginal note: Application for rescission or leave to proceed	*Note marginale :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*
Marginal note: Court may grant leave	*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.	*Note marginale :Pouvoirs du tribunal*
	(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	*Note marginale :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.*

[17] The Federal Court is a successor to the Exchequer Court; and, under the provisions of section 4 of the *Federal Courts Act*, supra, is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.

4. The division of the Federal Court of Canada called the	*4. La section de la Cour fédérale du Canada, appelée la*

Federal Court — Trial Division is continued under the name "Federal Court" in English and "Cour fédérale" in French. It is continued as an additional court of law, equity and admiralty in and for Canada, for the better administration of the laws of Canada and as a superior court of record having civil and criminal jurisdiction.	*Section de première instance de la Cour fédérale, est maintenue et dénommée « Cour fédérale » en français et « Federal Court » en anglais. Elle est maintenue à titre de tribunal additionnel de droit, d'equity et d'amirauté du Canada, propre à améliorer l'application du droit canadien, et continue d'être une cour supérieure d'archives ayant compétence en matière civile et pénale.*

[18] The relevant provisions of the *Federal Courts Act*, as they stood at the time, and for the present purposes, are not different from the present provisions; were considered by the Supreme Court of Canada in *Canada (Human Rights Commission) v Canadian Liberty Net*, [1998] 1 SCR 626, where Bastarache J for the majority reviewed many of the provisions of that *Act* and at paragraph 36 concluded that the jurisdiction of the Federal Court should not be construed in a narrow fashion, and that the Court can be considered to have a plenary jurisdiction:

> *36 As is clear from the face of the Federal Court Act, and confirmed by the additional role conferred on it in other federal Acts, in this case the Human Rights Act, Parliament intended to grant a general administrative jurisdiction over federal tribunals to the Federal Court. Within the sphere of control and exercise of powers over administrative decision-makers, the powers conferred on the Federal Court by statute should not be interpreted in a narrow fashion. This means that where an issue is clearly related to the control and exercise of powers of an administrative agency, which includes the interim measures to regulate disputes whose final disposition is left to an administrative decision-maker, the Federal Court can be considered to have a plenary jurisdiction.*

[19] The Federal Court may deal with vexatious matters in several ways. If a particular pleading in a proceeding is "scandalous, frivolous or vexatious" or is an "abuse of the process of the Court",

Rule 221 of the *Federal Courts Rules* (SOR/98-106) provides that the Court may order the proceedings dismissed or the particular pleading struck out. If a person, whether or not a litigant, behaves in a manner that is in contempt of the Court or its process, Rules 466 to 472 provide that the Court may review the alleged contempt and impose penalties, including imprisonment, a fine, a restraining order and sequestration.

[20] Section 40 of the *Federal Courts Act* provides a process whereby a person who has used the Court system in such a way as to be found to be a vexatious litigant may be so declared and restraints put upon the access by that person to the Court system.

[21] The Courts are a fundamental part of our democratic form of government, and access to the Courts should be safeguarded. However, where it is found that persons used the system vexatiously so as to occupy an inordinate amount of the time and resources of the Court, and vex the Court officials and staff unnecessarily so as to preclude the proper carrying out of their duties, then constraints must be placed upon those persons so as to ensure that the Courts' resources are properly available to all those who legitimately seek to use the Courts' processes and seek justice. The Court must balance the right of an individual to have his or her day in Court with the right of other individuals to have their day in Court, as well. This Court, as part of its plenary jurisdiction, as well as under section 40 of the *Federal Courts Act* has the power to declare persons to be vexatious litigants and to grant consequential relief.

[22] Relief under section 40(1) of the *Federal Courts Act* has been described as an extraordinary, but necessary, remedy by Dawson J (as she then was) in her reasons in *Canada Post Corporation v Varma* (2000), 192 FTR 278, [2000] FCJ No 851 at paragraphs 20 and 21:

> *[20] The jurisprudence of this Court has not set forth, in any detail, the purpose of subsection 40(1) of the Act. However, in Mishra v. Ottawa (City), [1997] O.J. No. 4352, Sedgwick J. of the Ontario Court of Justice (General Division) considered the purpose of the equivalent provision of the Ontario Courts of Justice Act, R.S.O. 1990, c. C. 43 and stated at paragraph 52 of his reasons:*
>
> > *[52] An order will not readily be granted by this court that would restrict in any way the free access of any person to the courts to assert his or her civil rights and remedies. The access must be exercised responsibly and with due regard for the applicable laws and rules of procedure and the integrity of the administration of justice, including the protection accorded to others against being indiscriminately made the subjects of vexatious proceedings.*
>
> *[21] An order under subsection 40(1) is an extraordinary remedy. However in appropriate cases, it is necessary in order to maintain respect for the judicial process and to protect others from frivolous and pointless litigation.*

[23] At paragraph 22, she adopted the factors to be considered as set out by the Ontario Courts, which:

- reveals that the categories for vexation are never closed

- that the history of the proceedings must be examined to determine if they are vexatious in nature; for instance:

- were there no reasonable grounds to institute an action?

- the issue has already been determined

- unsuccessful appeals were pursued

- grounds and issues raised in previous proceedings tend to be rolled forward into subsequent proceedings

[24] At paragraph 23, Dawson J wrote that: the individual's behaviour may be relevant; are there frivolous and unsubstantiated allegations of impropriety leveled against lawyers who acted for or against the individuals; are the individual's proceedings replete with extreme and unsubstantiated allegations.

[25] In *R v Mennes*, 2004 FC 1731, the late Layden-Stevenson J (as she then was) referred to the decision of Justice Henry of the Ontario High Court in *Lang Michener Lash Johnson v Fabian, et al* (1987), 37 DLR (4^{th}) 685, which listed several factors to be considered by the Court. At paragraphs 76 to78 she wrote:

> *76 An order under subsection 40(1) is an extraordinary remedy. However, in appropriate cases, the remedy is necessary in order to maintain respect for the judicial process and to protect others from frivolous and pointless litigation: Olympia Interiors, supra. Because the provision in the Act is similar to the wording of the corresponding provision in the Ontario legislation, guidance can be obtained from Ontario judgments: Vojic v. Canada (Minister of National Revenue), [1992] F.C.J. No. 902 (T.D.).*

77 In Re Lang Michener et al. and Fabian et al. (1987), 37 D.L.R. (4th) 685, Justice Henry reviewed the Ontario jurisprudence and extracted the following principles regarding vexatious proceedings:

(a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;

(b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;

(c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

(d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

(e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;

(f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;

(g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

78 The categories for vexatious proceedings are not closed: Vojic, supra. In addition to the circumstances set out in Re Lang Michener, supra, proceedings have been found to be vexatious where:

> *-- the court has no power to grant the requested relief: Foy, supra;*
>
> *-- proceedings are instituted to delay other proceedings: Mascan Corp., supra;*

> *-- the litigant has instituted proceedings but failed to pursue a large number of the proceedings with diligence: Yorke v. Canada (1995), 102 F.T.R. 189 (T.D.);*
>
> *-- pleadings are replete with extreme or scandalous allegations that remain unsubstantiated: ibid.;*
>
> *-- disregard for the Court has been demonstrated: Vojic, supra;*
>
> *-- the litigant has distributed court documents to parties unrelated to the proceedings for purposes extraneous to the litigation: Canada Post Corp. v. Varma (2000), 192 F.T.R. 278 (F.C.T.D.);*
>
> *-- the litigant has relied on abusive tactics in the conduct of the litigation: Nelson v. Canada, 2002 FCT 77 aff'd. (2003), 301 N.R. 359 (F.C.A.), leave to appeal dismissed, [2003] S.C.C.A. No. 139.*

[26] Importantly, she wrote at paragraph 79 that the matter must be approached objectively rather than subjectively. I will approach the matter objectively.

[27] However, I pause because I have searched for literature that may assist in considering what, subjectively, may be motivating a person who may be considered a vexatious litigant. There is very little; however, I have found an article by Mark I. Levy, MD, published on the web by Forensic Psychiatric Associates Medical Corporation, dated June 10th, 2007 entitled "Vexatious Litigants – Litigants Who Won't Accept "No" (or "Yes") for an Answer". He provides three behavioural characteristics commonly demonstrated by vexatious litigants:

> *1. A history of changing counsel more than once, coupled with at least one episode of representing themselves in Court, in propria persona. Not surprisingly, competent counsel generally find a means to ethically remove themselves from the case after a period of poor client control.*

Sooner or later, usually after a time of appearing "pro per", these litigants find counsel who more or less identify with their client, presumably for reasons having to do with their own personal psychology. The result of this is an attorney-client dyad that is driven by a mission. No client control exists nor is it even recognized by plaintiff's counsel as lacking. Hence no settlement can ever occur.

2. Evidence of narcissistic and paranoid personality traits, obtained from psychiatric examination and psychological testing. These traits are generally manifested by attitudes expressed verbally or behaviorally (e.g., through physical appearance) conveying that the individual considers himself to be an exception, i.e., that the normal rules of behavioral conduct within a judicial process to which all litigants are expected to submit uniquely do not apply to him because he is allegedly special, having suffered abuse, humiliation and/or victimization unduly at the hands of alleged perpetrators, including judges, thereby entitling the vexatious litigant to exceptional status and accommodation by the Court. Not infrequently, although the source of alleged abuse is initially the defendant in a civil action, eventually the Court itself is drawn into this "dance" and is experienced from a paranoid perspective by the litigant, as itself also an abuser. Invariably, this is due to the Court attempting to impose a modicum of decorum on behavior of the litigant by invoking normal procedural requirements. As a result of this transformation of the Court, in the litigant's mind, from arbitrator to oppressor, the Court's responses may eventually be perceived as more persecutory and humiliating than was the alleged conduct of the original defendant.

3. A refusal to settle disputes through customary procedural channels of negotiation and even traditional litigation. These individuals wish to have their alleged suffering, humiliation and victimization witnessed on the stage of litigation. Their common fantasy is that unspecified "others" (the jury, initially the Court itself) will sympathize with suffering and offer some sort of illusoryl vindication and redemption. Consequently, not only do they characteristically refuse to accept negative judicial decisions, sometimes they will reject decisions in their own favor, if they believe that acceptance will terminate the litigation and their chances to obtain the imagined vindication. Although this may superficially appear to be perverse, it is in fact a direct product of their peculiar motivation to litigate in the first

> *place, i.e., to have their alleged victimization witnessed, not to resolve conflict. Of course, such motivation leads to an endless quest because no degree of witnessing and acknowledgment of their pain can ever approach the unconditional love for which they long and thus "restore" the wounded narcissism and damaged self esteem of these individuals. If permitted to do so, they will attempt to appeal trial court decisions to the highest judicial levels.*

[28] I will, however, proceed with an objective analysis of the circumstances in this case.

THE FACTS

[29] The Applicant has filed the Affidavit of a law clerk in the offices of its solicitors, Justin Loveland, which provides documents taken from several proceedings in this Court, the Federal Court of Appeal, the Ontario Courts and the Supreme Court of Canada in which Coote was a party. There was no cross-examination of the affiant.

[30] In addition, the Court is aware of proceedings in the present file T-312-13 as well as appeals taken by Coote to the Federal Court of Appeal arising out of these proceedings. As stated in *Varma*, supra, at paragraph 10, a Court is entitled to take notice of its own records and proceedings therein.

[31] I summarize many of the steps taken by the Respondent Coote in these and other proceedings:

> On February 10, 2011. Coote was declared a vexatious litigant in the Ontario Superior Court under section 140(3) of the Courts of Justice Act. This decision was affirmed by the Ontario Court of appeal (2011 ONCA 562).

Coote filed what he called an Appeal "as of Right" with the Supreme Court of Canada. The Registry of that Court corresponded with Coote advising that this was improper but that the matter would be treated as an Application for Leave.

Coote filed a Motion for Directions respecting the Supreme Court registry's decision in the Federal Court on March 14, 2012. Justice Campbell of this Court dismissed the Motion for lack of jurisdiction due to an absence of an originating process within the Federal Court's Jurisdiction.

Coote attempted to file a Notice of Motion seeking to vary or set aside the Direction of Justice Campbell.

On May 16, 2012 Justice Mosley directed that the Notice of Motion should not be accepted for filing. Justice Mosley also directed the Registry to seek directions from a Judge of the court in respect of any future filings by Coote.

On the 5th of June, 2012 Coote commenced an action in the Federal Court against the staff of the Supreme Court of Canada and LawPRO (T-1083-12). The statement of claim claimed damages in the amount of $456,850,000. The allegations included procedural unfairness, abuse of process, undue delays, undue influence, dishonesty, deceit and fraud.

Coote issued another Statement of Claim in the Federal Court on June 25, 2012. Named as defendants were the law firm and members of that firm representing his son (defended by LawPRO) and members of the Immigration and Refugee Board (IRB). This arose from proceedings respecting his son Twain A. Coote in a deportation proceeding. Coote, who is not a lawyer, was purporting to be representing his son Coote Jr.

On July 26, 2012 the LawPRO Defendants filed a motion to strike the Second Claim because the court lacks jurisdiction. On August 2, 2012 Coote served a response to the motion to strike. His reply is difficult to comprehend. He appeared to seek to "strike" counsel for LawPRO, to "enforce defaults" and to obtain "leave to amend any oversights by the Federal Court staff or perfection in pleading law required by the defendants".

On August 7, 2012 the IRB Defendants served their motion to strike Coote's Second Claim against them.

On August 14, 2012 Coote brought a motion to note the LawPRO defendants in default. On August 15 he served another Motion Record seeking to note the IRB Defendants in default. On August 24 the LawPRO Defendants responded to the motion for default judgment.

On August 21, 2012 Justice Gagne struck out the claim and awarded costs to the Defendants set at $500. These costs have been paid.

On August 30, 2012 Coote served his reply to the LawPRO Defendant's responding motion record.

Coote brought a motion for a reconsideration of Justice Gagne's orders and for default judgment.

On September 6, 2012 LawPRO responded to the motion for reconsideration. On September 11, 2012 Coote served a reply to LawPRO's responding motion record. Justice Gagne dismissed the Motion for Reconsideration on October 30, 2012.

On September 20, 2012 Justice Hughes struck out the Second Claim and awarded costs to the LawPRO and IRB Defendants. The Coote Motions for Default was also dismissed.

On September 25, 2012 Coote brought two appeals appealing the orders of Justice Hughes and the dismissal of the Motion for Default.

On October 14, 2012 Coote sent a letter to the Registrar of the Federal Court of Appeal. He sought directions with respect to "Irregularities, Non-Compliance of the Federal Court Rules and Prejudice".

On October 30, 2012 Justice Dawson of the Federal Court of Appeal stated in a Direction that the Court would not respond to this question.

On October 31 Coote brought a motion to determine the contents of the Appeal Books.

On November 1, 2012 Coote brought a motion to vary and set aside the direction of Justice Dawson

On November 30, 2012 Justice Trudel made an Order with respect to Coote's motion to have the decision to vary or set aside the direction of Justice Dawson. Justice Trudel dismissed the motion.

On December 11, 2012 Justice Gauthier of the Court of Appeal made an Order with respect to Coote's motion to determine the contents of the Appeal Book.

On February 26, 2013 Prothonotary Aalto provided an order dismissing Coote's motion to quash.

On February 27, 2013 Justice Stratas of the Federal Court of Appeal Ordered that Coote's several appeals be consolidated.

On March 13, 2013 Justice Heneghan provided a written Direction with respect to Coote's objection regarding LawPRO filing an amended statement of claim. She dismissed the objection as it had no basis.

On March 18, 2013 Justice Manson provided an Order with respect to Coote's motion to vary or set aside the Order of Prothonotary Aalto.

On March 27, 2013 Coote filed a Notice of Appeal of the decision of Justice Manson.

On April 11, 2013 Justice Boivin provided an Order with respect to the date, time and place of the hearing of the present motion.

On April 24, 2013, Justice Nadon of the Federal Court of Appeal dismissed Coote's motion for "clarification" of Justice Stratas' Order and to "strike lawyers and their documents".

On April 29, 2013 Justice Stratas provided Directions with respect to consolidation of several of the proceedings stemming from interlocutory orders of Justice Boivin and Manson.

On May 3, 2013 Coote filed a Notice of Appeal of the decision of Justice Boivin.

On May 27, 2013 a direction from the Federal Court stated that any objection of Mr. Coote with respect to insufficient notice of the hearing and insufficient time of the hearing be filed as a motion.

On May 30, 2013, Justice Stratas Ordered consolidation of various appeals and suspended further filing of motions unless the grounds were expressly stated.

> On June 5, 2013 an Order of this court directed that Coote's motions are to be heard on June 10, 2013 including the motion to set aside or vary the orders of Justice Manson and Justice Boivin.
>
> In addition to the foregoing Coote has sent numerous letters and emails including draft pleadings and motion records to the parties and the Court.

[32] As an illustration of the tone of some of the correspondence filed by Coote with the Court, I set out the following taken from pages 16 and 17 of the Record filed by Coote in response to the present motion. It is a portion of a letter written by Coote to the Applicant's solicitors, dated February 12, 1013:

> *I shall seek your ultimate striking from the record for abusing the court process, which the Registry never allowed previously, repeatedly frustrated, evident at pages 194-196 and 255-258; I shall challenge all three sections above as being discriminatory, applied unconscionably, enforced spitefully, maliciously and vexatiously when allegations are made against Judges, lawpro, registry staff, crown, Canadian Judicial Council officials and Judges at the Council, with some of the same Judges allegations are made against in provincial courts to the Canadian Judicial Council in my case and the federal court in the cases cited, assigned to hear s.40 motions or the equivalent s.140, a clear conflict of interests, as well as applied unfairly under the applicable sections of the Charter and constitutionally challenge these three sections by serving all attorney generals of all provinces; and I shall file other Motions under the Federal Court Rules on the many issues that are all contested based on inaccuracies, wrong assumptions, rolling forward, re-hashing and re-litigating matters highlighted at page 229 of your record, presently before the Federal Court of Appeal, supporting the adjournment and Motion to stay to follow. Given there may be a need for a Motion for direction, such is also a consideration for adjournment.*
>
> *Lastly, I shall file a cross motion under s.40 seeking to hold the SCC defendants, lawpro and all its defendants, the federal crown and its defendants, and the provincial crown and all its defendants, equally seeking a vexatious order, relying on your own record outlining the ungovernable conduct of all concerned. If vexatious order applies to*

> *all litigants, so should it to Supreme Court defendants, provincial crown and their defendants, as well as federal crown and their defendants.*
>
> *As I stated, my intentions are unshakable and unequivocal, and my resolve will be supported by my Notice of Appearance to follow.*

THE ONTARIO COURTS

[33] I am aware that Coote has been declared to be a vexatious litigant in a decision of Justice van Rensburg of the Ontario Superior Court of Justice in *Ontario v Coote*, 2011 ONSC 858, a decision affirmed by the Court of Appeal for Ontario, 2011 ONCA 562. Justice van Rensburg wrote at paragraphs 86 to 91 of her decision:

> *86 The focus of the s. 140 application is on the conduct of the litigant, the manner in which he has pursued litigation in our courts and whether and to what extent his conduct has abused our courts' processes. In this case the respondent has demonstrated all of the characteristics of a vexatious litigant identified by Henry J. He has re-litigated procedural and substantive issues that have already been determined against him. He has rolled forward grounds and issues from one proceeding into subsequent actions and has made claims against lawyers who have acted for or against him in earlier proceedings. He has failed to pay any of the costs awarded against him. He has persistently taken unsuccessful appeals from judicial decisions.*
>
> *87 It is evident from the materials he has filed in the various proceedings that Mr. Coote has been using the courts and the various proceedings as a platform from which to voice his various and ever-increasing grievances against our justice system and the many players in it, including judges, lawyers and court staff.*
>
> *88 Numerous judges have prepared detailed reasons for their decisions, explaining to Mr. Coote why certain claims he has persisted in advancing cannot succeed. Instead of accepting such guidance and pursuing his claims on the merits, Mr. Coote responded with allegations of misconduct. In response to adverse decisions, Mr. Coote has alleged conspiracies, conflicts of interest,*

> *incompetence, fraud and other improprieties on the part of judges, court staff and counsel.*
>
> *89 The steps Mr. Coote has taken in the courts are only the tip of the iceberg. Those named by Mr. Coote as respondents and defendants have retained counsel in order to respond to the proceedings that have been commenced against them. Their legal counsel have attempted to reason with Mr. Coote, ultimately preparing motions to attempt to winnow the non-justiciable claims from the claims that might have a chance of succeeding in court. The same lawyers have had to respond to voluminous emails and other communications from Mr. Coote.*
>
> *90 Mr. Coote has commenced proceedings and taken steps in the proceedings for purposes other than the assertion of legitimate rights, resulting in harassment and oppression of other parties and their counsel.*
>
> *91 I am satisfied that Mr. Coote is a vexatious litigant and that an order is required under s. 140 of the Courts of Justice Act to prevent his further abuse of the processes of our courts through the commencement and continuation of vexatious litigation.*

[34] Justice van Rensburg declared Coote to be a vexatious litigant and provided for consequential relief similar to that sought by LawPRO in these proceedings. She awarded costs payable to LawPRO. The Ontario Court of Appeal dismissed the appeal and awarded further costs in favour of LawPRO. I am advised that costs exceeding $135,000.00 remain unpaid by Coote.

[35] Coote sought to appeal to the Supreme Court of Canada "as of right". The Supreme Court of Canada Registry staff corresponded with Coote advising him that no appeal "as of right" existed in this matter, and that his application would be treated as an application for leave. Coote refused to accept this advice and ultimately sought to bring an action for substantial damages against the Registry staff - in the Federal Court.

COOTE'S MOTION TO SET ASIDE OR VARY THE ORDERS OF MANSON J AND BOIVIN J

[36] Coote has brought a motion, which was heard at the same time as the LawPRO motion, to set aside or vary the Order of Manson J dated March 18, 2013 and of Boivin J dated April 11, 2013 in these proceedings. The Order of Manson J dismissed an appeal from the Order of Prothonotary Aalto refusing to quash these proceedings. The Order of Boivin J consolidated Coote's motion respecting *Charter* challenges and other relief with LawPRO's motion respecting vexatious litigant, and set both down to be heard June 10, 2013.

[37] I will dismiss this motion for several reasons:

(1) Absent Consent or unusual circumstances only the Judge of this Court who issued an Order can vary that Order, and only in limited circumstances, such as clerical error or a matter overlooked. Another Judge of this Court cannot do so;

(2) Both Orders are under appeal;

(3) As to Boivin J's Order, the matter is now moot; I heard both motions on June 10, 2013.

[38] I will dismiss this motion with costs, including disbursements and taxes, fixed at a nominal amount of $250.00, since this motion was essentially bound up with the LawPRO motion.

COOTE'S MOTION, RESPECTING THE CHARTER, TO HAVE LAWPRO DECLARED A VEXATIOUS LITIGANT AND FOR OTHER RELIEF

[39] As Ordered by Boivin J, I heard this motion at the same time as I heard LawPro's motion to have Coote declared a vexatious litigant.

[40] I am dismissing this motion. First, the evidence before me, which consists of much of the proceedings of record in the Supreme Court of Canada involving The Queen in Right of Ontario, Coote, and LawPRO, simply does not demonstrate that LawPRO has acted in a vexatious manner. In fact, it supports a conclusion that Coote has acted in such a manner. There has been attached to Coote's affidavit some proceedings in Ontario to which LawPRO is not a party, and which is irrelevant in respect of LawPRO. There simply is no evidence upon which any allegation as against LawPRO being a vexatious litigant is substantiated.

[41] As to a *Charter* challenge, no argument has been made and no evidence has been provided that supports a challenge to section 40 of the *Federal Courts Act* based on the asserted sections of the *Charter*, sections 15(1) and 24(1). The same pertains to Coote's purported challenges to section 40(1) and 58(1)(a) of the *Supreme Court Act*, RSC 1985, c.S.26.

[42] The Ontario Court of Appeal, in a decision dated August 23, 2011, dismissed Coote's constitutional challenge to section 140 of the Ontario *Courts of Justice Act*. Therefore, even if the Federal Court had jurisdiction respecting the constitutionality of that *Act*, which it does not, the matter is *res judicata*.

[43] I will dismiss this motion with costs, including disbursements and taxes, fixed at a nominal amount of $250.00, since this motion was essentially bound up with the LawPRO motion.

"Roger T. Hughes"
Judge

Toronto, Ontario
June 13, 2013

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-312-13
STYLE OF CAUSE:	LAWYERS' PROFESSIONAL INDEMNITY COMPANY v ANTHONY COOTE
PLACE OF HEARING:	Toronto, Ontario
DATE OF HEARING:	June 10, 2013
REASONS FOR ORDERS:	HUGHES J.
DATED:	June 13, 2013

APPEARANCES:

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Anthony Coote	FOR THE RESPONDENT (ON HIS OWN BEHALF)

SOLICITORS OF RECORD:

WEIRFOULDS LLP Barristers & Solicitors Toronto, Ontario	FOR THE APPLICANT
n/a	FOR THE RESPONDENT (ON HIS OWN BEHALF)