Federal Court

Cour fédérale

Date: 20140314

Dockets: T-2285-12
T-6-13

Citation: 2014 FC 254

Ottawa, Ontario, March 14, 2014

PRESENT: The Honourable Mr. Justice Russell

Docket: T-2285-12

BETWEEN:

HER MAJESTY THE QUEEN

Applicant

and

MAJOR KEYVAN NOURHAGHIGHI

Respondent

Docket T-6-13

AND BETWEEN:

THE LAW SOCIETY OF UPPER CANADA

Applicant

and

MAJOR KEYVAN NOURHAGHIGHI

Respondent

REASONS FOR JUDGMENT AND JUDGMENT

INTRODUCTION

[1] These are two applications under subsection 40(1) of the *Federal Courts Act*, RSC, 1985, c F-7 [Act] for an order declaring the Respondent to be a vexatious litigant, and thereby barring him from initiating or continuing any proceedings in this Court without first obtaining leave.

BACKGROUND

[2] There is a long and tortuous history to this proceeding. The Respondent, Mr. Nourhaghighi, has initiated some 15 actions and applications in this Court against the Applicants and many others dating back to May 1995. Most have been struck for lack of merit or dismissed for delay or mootness. One has met with partial success. Some have included multiple procedural motions, including motions to strike, motions for contempt, motions to set aside orders made by the Court, and attempts to re-open proceedings that have been dismissed, and several have resulted in appeals to the Court of Appeal. The Crown has sought on two previous occasions to have Mr. Nourhaghighi declared a vexatious litigant by this Court, without success. However, Mr. Nourhaghighi has been declared a vexatious litigant in the courts of Ontario: order of Wilkins J dated February 6, 1997, Ont Gen Div File No. RE-6938/96, aff'd *Toronto Hospital v Nourhaghighi*, [1999] OJ No 1756 (CA).

[3] The nature and scope of the allegations made by Mr. Nourhaghighi in the various actions and applications he has brought before this Court defy easy or concise summary. The common thread is that various public officials and private actors have engaged in a broad-based conspiracy to deprive him of his livelihood, his personal security, and various other rights and benefits, and then have further conspired, along with court staff, judges and opposing counsel, to deny him any

judicial remedy for these wrongs. He has alleged: conspiracy, fraud and abuse of office on the part of numerous federal and provincial officials; interference with and spying upon his private communications by telecommunications providers and university-based hackers; stealing of evidence, unlawful interference with court processes and tampering with judicial orders by court staff; bias, corruption and racism on the part of judges and prothonotaries; assault and torture by the police, aided an abetted by the courts and others; and massive corruption of the justice system, facilitated by the Law Society of Upper Canada [Law Society], which Mr. Nourhaghighi has repeatedly alleged to be a criminal organization. Among other consequences, Mr. Nourhaghighi has alleged that these corrupt and conspiratorial actions by various public and private actors have: prevented him from working in the aviation industry, despite his claimed credentials as a "Senior Fighter and Transport Pilot" and a former officer in the Iranian Air Force and Army; compromised his physical security, privacy and livelihood; affected the processing of his citizenship application (which was approved) and a temporary residency application by his nephew (which was refused); and prevented him from obtaining justice for any of the above in the provincial or federal courts or human rights tribunals.

[4] Mr. Nourhaghighi's pleadings and affidavits over the years reflect a belief that he is engaged in a noble effort not only to vindicate his own rights, but to expose corrupt practices that harm all Canadians. In the course of this effort, he has named scores of individuals and organizations as defendants and respondents, including public officials, court officers, judges, private banks, telecommunications companies and law firms, the University of Toronto, the provincial and federal human rights tribunals, the Law Society, the RCMP, the Superintendent of Financial Institutions, and the Canadian Radio-Telecommunications Commission, and others. His most recent application,

in 2012, named only the Minister of Citizenship and Immigration as respondent. However, in the course of that proceeding, as in others, he sought to have a wide range of individuals and organizations, including the Law Society, cited for contempt of court as a result of alleged conspiratorial actions.

[5] The Crown first sought an order declaring Mr. Nourhaghighi a vexatious litigant under s. 40(1) of the Act in June 1998. Mr. Nourhaghighi had initiated nine actions in this Court between May 1995 and August 1997 (T-571-95; T-668-95; T-695-95; T-766-95; T-955-95; T-2464-95; T-2611-95; T-1900-96; T-1685-97), each of which had been struck. Mr. Nourhaghighi filed another action (T-942-99) in May 1999 while the Crown's s. 40 application was pending. Justice Campbell found that the Court's discretion under s. 40(1) was to be exercised contextually, including "with regard to the respondent's objective in bringing Court action, as well as the form and substance of the actions themselves": *Canada v Nourhaghighi* (1999), 89 ACWS (3d) 270, [1999] FCJ No 847 at para 4 (TD) [*Nourhaghighi (1999)*]. He found that the Respondent honestly believed he had been wronged in a number of ways, honestly believed that a conspiracy existed between the Government and the Courts to deny him justice, and was frustrated by the lack of an opportunity to have his grievances fully heard and a decision rendered on their merits. Justice Campbell found that regardless of whether Mr. Nourhaghighi could be found to have instituted vexatious proceedings or conducted a proceeding in a vexatious manner as described in the Act, it was not appropriate to exercise the Court's discretion to declare him a vexatious litigant because: 1) no actions had been commenced between August 1997 and April 1999, and there was therefore no immediate need for the order; 2) such an order would only serve to confirm Mr. Nourhaghighi's belief in a conspiracy to deny him justice, and the reputation of the delivery of justice would suffer thereby; 3) the normal

process for dealing with the actions brought by Mr. Nourhaghighi had been used and was workable; and 4) the Crown was capable of efficiently and effectively identifying whether any subsequent statement of claim disclosed a cause of action and bringing a motion to strike claims considered to be deficient, and this was preferable to the process of requiring leave to be granted to initiate such an action: *Nourhaghighi (1999)*.

[6] Between 1999 and the Crown's second application to have Mr. Nourhaghighi declared a vexatious litigant in June 2007, Mr. Nourhaghighi brought three applications and two actions before this Court (T-942-99; T-1535-00; T-768-03; T-762-04; T-337-06, Applicant's Record in T-2285-12 at p. 3), resulting in more than 20 motions and several appeals. None of these matters were pending when the s. 40 application was filed. Both actions had been dismissed for disclosing no reasonable cause of action, one application was dismissed for delay, and another was dismissed for mootness. The last was conceded in part by the Crown based on a breach of procedural fairness, with the remainder being struck for non-conformance with the *Federal Court Rules*, SOR/98-106 [Federal Court Rules]. Mr. Nourhaghighi had also pursued an appeal of an interlocutory order regarding scheduling in the Crown's first application to have him declared a vexatious litigant, despite his success on the merits in that application (A-635-98). This appeal was eventually dismissed for mootness, after several procedural orders and a hearing at the Court of Appeal: *Nourhaghighi v Canada*, 2001 FCA 94; see Butts Affidavit, Crown's Application Record at para 12 and exhibits 9 - 21.

[7] Justice O'Keefe granted a motion by Mr. Nourhaghighi to strike the Crown's second s. 40 application, finding that it was bereft of any chance of success: *Canada v Nourhaghighi*, 2007 FC 1074 at paras 12-13 [*Nourhaghighi (2007)*]. Justice O'Keefe explained this conclusion as follows:

> [13] I have reached this conclusion because:
>
> 1. The respondent had no matters before this Court when the applicant's application was filed nor at the date of the hearing of this motion.
>
> 2. According to the applicant's arguments before me, the respondent has in the past, filed three applications, two actions, 20-plus motions and several appeals.
>
> 3. According to the respondent, he was successful on some of the matters.

[8] The reference to some success by Mr. Nourhaghighi appears to relate to application T-762-04, wherein Mr. Nourhaghighi challenged a decision of the Security Intelligence Review Committee (SIRC) dismissing his complaint that the Canadian Security Intelligence Service (CSIS) acted unlawfully by interviewing him in connection with his citizenship application. Mr. Nourhaghighi also challenged an earlier decision of CSIS itself dismissing his complaint, made allegations of tortious conduct by Court registry staff, and attempted to bring contempt proceedings against two CSIS employees. At a late stage in the proceedings, counsel for the Crown discovered that SIRC had not fully complied with the complaint procedures required by the *CSIS Act*. The Crown therefore consented to an order setting aside the Committee's investigation and returning the complaint for a fresh review. The remainder of the application was struck for non-compliance with the Federal Court Rules and because "many allegations [were] immaterial and redundant to what Mr. Nourhaghighi's complaint really [was]": see *Nourhaghighi v Canada (Security Intelligence Review Committee)*, 2005 FC 148 [*Nourhaghighi (2005)*].

[9] Following Justice O'Keefe's decision in *Nourhaghighi (2007)*, above, Mr. Nourhaghighi initiated no new proceedings in this Court until March 2012. On March 6, 2012, he filed an application for judicial review challenging a decision of a visa officer at the Canadian Embassy in Iran denying a temporary resident visa ("visitor's visa") to Mr. Nourhaghighi's nephew, Farzad Nour Haghighi (T-478-12). The conduct of that proceeding is central to the matter before the Court.

[10] In the course of challenging the visa decision, Mr. Nourhaghighi brought motions seeking contempt orders against a wide range of individuals and organizations, including counsel representing the Crown, staff of the Court registry, the Law Society, the University of Toronto, the visa officer in Iran, the Minister of Citizenship and Immigration, the Minister of Justice, the Ontario Attorney General, private lawyers and law firms, the associate chair of the Ontario Human Rights Tribunal, and many others. The Crown brought a motion to strike the application on the basis that, under s. 72(1) of the *Immigration and Refugee Protection Act*, SC 2001, c 27 [IRPA], leave of the Court was required to bring an application for judicial review of the visa officer's decision. Before these motions were heard, counsel for the Crown sent Mr. Nourhaghighi a letter on September 12, 2012, copied to the Court, stating that it had been determined that certain documents related to the visa officer's decision were missing and the Crown would be unable to defend that decision. As such, the government offered to send the matter back for re-determination by a different visa officer if Mr. Nourhaghighi would discontinue his application. In the alternative, the letter said, he could withdraw it and commence an application for leave under s. 72(1) of IRPA, and the Crown would consent to the late filing, the granting of leave, and an order that the application be granted and the matter sent back for re-determination by a different visa officer. The letter noted that the contempt proceedings would not be terminated by the discontinuance of the application.

[11] Mr. Nourhaghighi's contempt motions and the Crown's motion to strike were heard together on September 17, 2012, and Mr. Nourhaghighi confirmed to the Court that he did not wish to accept the Crown's offer (Transcript, Applicant's Record in T-2285-12, pages 2159-2160). Justice Near issued two orders on September 18, 2012, dismissing Mr. Nourhaghighi's contempt motions on the basis that there was "absolutely no merit to the Applicant's position with respect to any of the named persons" (*Nourhaghighi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1087 at para 1), and granting the Crown's motion to strike the application on the basis that leave was required under s. 72(1) of IRPA (*Nourhaghighi v Canada (Minister of Citizenship and Immigration)*, 2012 FC 1088).

[12] The next day, on September 19, 2012, Mr. Nourhaghighi filed a motion requesting that these orders be set aside, requesting the same relief he originally sought, and adding Justice Near to the list of those against whom he was seeking contempt orders. On December 20, 2012, Justice Rennie issued a direction that Mr. Nourhaghighi's motion record not be accepted for filing, noting that Mr. Nourhaghighi sought a remedy that could not be granted since an order of a judge of this Court can only be reviewed by the Court of Appeal. Justice Rennie added: "The Court invites counsel to consider whether an application should be made pursuant to s. 40 of the Federal Courts Act; viz HMQ v. Nourhaghighi 2007 FC 1074." Undeterred, Mr. Nourhaghighi filed a notice of motion on September 24, 2012, under Rule 399(b) of the Federal Court Rules, arguing that Justice Near's order striking his application was obtained by fraud and seeking to set it aside. Justice Kane dismissed this motion on October 2, 2012, finding that it was groundless.

[13] On October 16, 2012, Mr. Nourhaghighi filed an appeal challenging both of Justice Near's orders of September 18, 2012 and Justice Kane's order of October 2, 2012. On November 29, 2012, the Court of Appeal granted the Crown's motion to dismiss the appeal of Justice Near's strike order and Justice Kane's order refusing to vary it. It found that the appeal of the strike order was not properly before that Court, since leave was required under s. 72 of IRPA to bring the underlying judicial review application, and Justice Near had not certified a serious question of general importance as stipulated by s. 74(*d*) of IRPA. For the same reasons, the "collateral attack" on Justice Kane's order was also not properly before the Court: Order of November 29, 2012, A-443-12. The remaining portion of the appeal – relating to Justice Near's order refusing Mr. Nourhaghighi's contempt motion – was dismissed for delay on June 26, 2013.

[14] Meanwhile, on December 27, 2012, the Crown filed its s. 40 application seeking to have Mr. Nourhaghighi declared a vexatious litigant (T-2285-12). The Applicant Law Society, which was named as a contemnor by Mr. Nourhaghighi in his most recent application before this Court and has been named as a defendant in previous proceedings, launched its own s. 40 application against Mr. Nourhaghighi on January 3, 2013 (T-6-13), after obtaining the required consent of the Attorney General. Mr. Nourhaghighi brought motions to strike both of these applications. He also sought to have the Minister of Justice and Attorney General of Canada declared vexatious litigants and to have them barred from bringing any further proceedings against him except with leave of the Court. The motion to strike the Crown's application was dismissed by Justice Beaudry on January 14, 2013. The motion to strike the Law Society's application was dismissed by Prothonotary Aalto on January 29, 2013. Prothonotary Aalto observed that in the course of the hearing Mr. Nourhaghighi "launched into a specious attack on the Court alleging bias and conflict of

interest against the Court," that his conduct was "disrespectful to the Court as he refused to stop talking in the face of questions from the Court," and that his pleadings included information about a finding of the Ontario Provincial Court that was "entirely incorrect and… an effort by Mr. Nourhaghighi to mislead this Court": *Law Society of Upper Canada v Nourhaghighi*, 2013 FC 89 at paras 4, 13-15, 17. Mr. Nourhaghighi brought a motion to set aside that order, alleging that Prothonotary Aalto was in a conflict of interest position, and that he yelled at Mr. Nourhaghighi during the hearing, injuring his dignity. Justice Hughes dismissed this motion based on the written record on March 12, 2013, finding that Prothonotary Aalto's decision was correct and that the application should proceed to be heard on its merits. On May 28, 2013, Justice Hughes ordered that the two s. 40 applications be consolidated.

ISSUES

[15] The sole issue that arises here is whether Mr. Nourhaghighi should be declared a vexatious litigant under s. 40 of the Act, thus preventing him from initiating or continuing any proceeding in this Court without leave.

STATUTORY PROVISIONS

[16] The following provisions of the Act are applicable in these proceedings:

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	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

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.

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

(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).

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.

Application for rescission or leave to proceed

(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.

Requête en levée de l'interdiction ou en autorisation

(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

(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

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

proceeding.	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.

ARGUMENT

Applicants

[17] Both of the Applicants in this case acknowledge that relief under s. 40 is exceptional and must only be granted sparingly and with the greatest of care: *Mazhero v Fox*, 2011 FC 392 at para 38 [*Mazhero*]; *Wilson v Canada (Revenue)*, 2006 FC 1535 at para 28 [*Wilson*]. However, they argue that the threshold for this exceptional remedy is met and exceeded in this case.

Arguments of the Crown

[18] The Crown argues that, despite this Court's previous findings, there is now an immediate need for a s. 40(1) order. It argues that Mr. Nourhaghighi has continued to abuse the court process and has now been wasting public funds with his proceedings for well over ten years. The normal process for dealing with the form and substance of Mr. Nourhaghighi's actions is no longer workable. His documents are typically long, rambling and incoherent, and thus difficult to respond to. He continues to institute proceedings against counsel who act against him and judges who rule

against him, which are obviously untenable but must be dealt with through motions to strike or other procedural manoeuvres each and every time.

[19] The Crown argues that the term "vexatious" is broadly synonymous with the doctrine of abuse of process. Both s. 40(1) and the abuse of process doctrine protect the public interest in the integrity and fairness of the legal system, by preventing the use of court time and resources for improper purposes: *Adams v Royal Canadian Mounted Police* (1994), 174 NR 314 at 317-18, [1994] FCJ No 1480 at para 16 (FCA) [*Adams*]; *Canada v Olympia Interiors Ltd.*, [2001] FCJ No 1224 at para 50, 209 FTR 182 (TD) [*Olympia Interiors*]; *Foy v Foy* (No. 2) (1979), 26 OR (2d) 220, 102 DLR (3d) 342 (Ont CA) [*Foy No. 2*]. In considering a s. 40 application, the Court is entitled to take notice of its records and the jurisprudence of other courts: *Canada Post Corp. v Varma* (2000), 192 FTR 278, [2000] FCJ No 851 at paras 23, 59 (TD) [*Canada Post*]; *Salem v Canada*, 2004 FC 168 at para 5; *Mazhero*, above, at para 13; *Vojic v Canada (Minister of National Revenue)*, [1992] FCJ No 902 at para 4, 92 DTC 6539 (TD) [*Vojic*]; *Canada v Warriner* (1993), 70 FTR 8, [1993] FCJ No 1007 (TD); *Olympia Interiors*, above, at para 51. While the categories are not closed (*Mazhero*, above, at para 13; *Canada Post*, above, at paras 23, 59; *Voijic*, above, at para 4), the Crown notes that Canadian courts have found proceedings to be vexatious, or litigants to be vexatious litigants, where:

- There are no reasonable grounds to institute the action or there can be no reasonable expectation of relief;
- The Court has no power to grant the relief requested;
- The Respondent in a s. 40 application has instituted but failed to pursue a large number of proceedings with diligence;

- Multiple or repetitive proceedings are commenced to determine an issue that has already been decided;
- The action was brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings;
- Pleadings are replete with extreme or scandalous allegations that remain unsubstantiated;
- The Respondent has demonstrated disregard for the court;
- The pleadings launch frivolous and unsubstantiated allegations of impropriety against judges, court officials and lawyers who have acted against the respondent; and
- The respondent has relied on abusive tactics in the conduct of the litigation.

(See *Mascan Corp. v French* (1988), 64 OR (2d) 1; 49 DLR (4th) 434 (Ont CA); *Foy* No. 2, above; *Yorke v Canada* (1995), 102 FTR 189 at 193 (TD); *Wilson*, above, at paras 30-31; *Mishra v Ottawa (City)*, [1997] OJ No 4352 at para 53, 75 ACWS (3d) 266 (Ont Gen Div); *Vojic*, above, at para 4; *Mazhero*, above, at para 44; *Nelson v Canada (Minister of Customs and Revenue Agency)*, 2002 FCT 77, [2002] FCJ No 97 (TD), aff'd 2003 FCA 127 at para 24.)

[20] The Crown notes that vindictiveness or malice is not a prerequisite for vexatiousness: *Olympia Interiors*, above, at paras 53, 61. Furthermore, the Crown argues, the jurisprudence militates against the notion, previously relied upon by this Court, that a vexatious litigant application can succeed only where there exists active litigation between the parties. Rather, such applications are "separate proceedings" that are "aimed at the litigant and not the litigation": *Ontario v Coote*, 2011 ONSC 858 at paras 76, 84 [*Coote*]; *Kallaba v Bylykbashi* (2006), 265 DLR

(4th) 320, 2006 CanLII 3953 at para 115, (Ont CA) [*Kallaba*], leave to appeal ref'd, [2006] SCCA No 144.

[21] The Crown argues that the proceedings initiated by Mr. Nourhaghighi – which have resulted in more than 50 orders and directions from this Court and the Federal Court of Appeal since May 1999 – meet and exceed every criterion for vexatious litigation. The Crown says that these proceedings tend to lack any merit, as evidenced by the fact that T-762-04, T-942-99 and T-337-06 were struck because they disclosed no reasonable cause of action, as were nine other actions commenced prior to Justice Campbell's decision on the first s. 40 application in 1999. The Crown says Mr. Nourhaghighi frequently asks the Court for relief which it has no power to grant. He fails to prosecute matters with diligence, as evidenced by the fact that court files T-942-99 and T-1535-00, and his appeals in A-50-01, A-59-03 and A-151-04, were dismissed when Mr. Nourhaghighi failed to appear or missed deadlines. The Crown says that Mr. Nourhaghighi makes extreme, scandalous and unsubstantiated allegations, uses abusive and inflammatory language in his pleadings, and routinely makes unsubstantiated allegations of impropriety against lawyers who have acted against him through motions seeking contempt orders. Mr. Nourhaghighi resorts to abusive and manipulative tactics, such as motions to find his opponents in contempt of court, refusal of service and belligerent and aggressive conduct in the courtroom. He brings meritless interlocutory motions on which he files voluminous materials, and attempts to re-open court proceedings months or years after they were concluded. Furthermore, his conduct and the proceedings he has initiated have been described by this Court as vexatious and improper in the past: *Nourhaghighi v Canada* (1996), 64 ACWS (3d) 314, [1996] FCJ No 841 at paras 9, 14-15 (TD); *Nourhaghighi v Canada*

(Minister of Citizenship and Immigration), 2003 FC 1376 at para 11; *Nourhaghighi v Canada*, 2006 FC 817 at para 9.

[22] The Crown argues that Mr. Nourhaghighi's most recent application for judicial review continues the baseless, abusive and vexatious pattern outlined above. The Crown quotes many examples of allegedly vexatious pleadings by Mr. Nourhaghighi, and notes that much of the litigation in connection with that application could have been avoided if Mr. Nourhaghighi had accepted the Crown's offer to settle the matter, which he repeatedly declined to do even when it was explained to him by Justices Near and Kane. Instead, Mr. Nourhaghighi proceeded to litigate an application that had no chance of success.

[23] In summary, the Crown says that while Mr. Nourhaghighi may not have qualified as a vexatious litigant in 1999 and 2007, his more recent litigation – which has been persistent, frivolous, abusive and redundant – amply demonstrates that he is now a vexatious litigant within the meaning of s. 40(1) of the Act. The requested order is therefore justified to protect the public, the Crown and the administration of justice from these continuing abuses of process, which are costly, time-consuming, and fail to resolve any meritorious issues.

Arguments of the Law Society of Upper Canada

[24] In addition to supporting and elaborating upon several of the arguments made by the Crown, the Law Society argues that the requested order would shield innocent third parties from being drawn into litigation that the Court does not deem to be legitimate. The Law Society points to two broad patterns in Mr. Nourhaghighi's conduct in the Ontario and Federal courts that it regards as

particularly vexatious: he draws individuals completely unrelated to a dispute into the litigation; and he alleges contempt by opposing counsel without an evidentiary basis.

[25] The Law Society points to the October 2012 report of the Subcommittee on Global Review of the Federal Court Rules, which outlined a problem of vexatious proceedings in the Federal Court: Report of the Subcommittee, Subcommittee on Global Review of the Federal Court Rules, October 16, 2012, Law Society's Application Record, Volume 2, Tab 37. The Law Society argues that Mr. Nourhaghighi is contributing to the problem of wasteful and unnecessary litigation that deprives meritorious claims of scarce judicial resources.

[26] The Law Society argues that the issue in a vexatious litigant proceeding is whether the respondent has "persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner": *Mazhero*, above, at para 39. It argues that the language of s. 40 only requires a single proceeding to be conducted in a vexatious manner, and that Mr. Nourhaghighi has a history of initiating vexatious proceedings and conducting otherwise permissible proceedings in a vexatious manner. Citing many of the same indicia of vexatious conduct noted above, the Law Society argues that Mr. Nourhaghighi's recent proceedings in this Court (in T-478-12) demonstrate the need for the requested order, because the orders of Justice Near and Justice Rennie show that he:

- Sought a remedy which could not be granted;
- Named a Justice in contempt of Court;
- Initiated a claim with "absolutely no merit" against a significant number of individuals completely unrelated to the issue before the Court;
- Attempted to relitigate a historical dispute that was already decided; and

- Made unsubstantiated allegations against opposing counsel and the Court.

[27] Furthermore, the Law Society argues that an order under s. 40 does not deprive an individual of access to the judicial system: *Burton v Assaf*, 2013 ONSC 1392 at para 38, discussing *Courts of Justice Act*, RSO 1990, c C.43, s. 140(1). Under s. 40(4) of the Act, a person declared a vexatious litigant is entitled to pursue an action or application if the Court determines that it is not an abuse of process. As such, the requested order would protect third parties from bearing legal costs and the inconvenience of court appearances where a proceeding is vexatious, but would in no way prevent Mr. Nourhaghighi from pursuing his legal rights. It simply allows the Court to act as a gatekeeper. The purpose of the provision is to balance the ability of an individual to access the judicial system while protecting innocent third parties from being drawn into unnecessary litigation.

Respondent

[28] Mr. Nourhaghighi's written submissions are brief. He notes that this is the Crown's third application under s. 40 (which he characterizes as malicious prosecutions), with the previous two being dismissed by Justices Campbell and O'Keefe. He says that he has had no open files before the Court since October 2012, and that Justice O'Keefe dismissed the Crown's s. 40 application with costs for this very reason in 2007: *Nourhaghighi (2007)*, above. He quotes Justice Campbell's order of June 1999 stating that Mr. Nourhaghighi "does respond to reasonable procedural requests when treated in a respectful manner": *Nourhaghighi (1999)*, above, at para 4.

[29] Mr. Nourhaghighi argues that he has brought major grievances before the Court that have not been fully heard, and there has been no decision rendered on their merits. He argues that there

are political grounds for the Crown's application ("malicious prosecution") against him, and appears to argue that his lack of success in some prior proceedings stems from the misconduct of the judiciary:

> … The Crown's hostility against Iran ended diplomatic crisis and serious hostilities against Major *inter alia* in the last 22 years, the Crown did not allow he leaves Canada contrary he hold a Passport, gain livelihood, attacked cruelly to his life by Police, obstructed his rights of counsel and even did NOT allow a to **His Visitor Visa Nephew to visit him after 22 years in this Canada's Exile** (T-478-12). In addition Judges' misconducts and abuse of the Judiciary power, encouraged Police & **Judges Crimes** against Major *inter alia* **Lutfy**, **Gibson**, **Snider JJ**[,] **Aalto P numerously shouted at Major** were he had complaints against them yet they acted contrary to the Principles of Judiciary Integrity, Independence, Impartiality, and **s. 11(d)** of the Charter.
>
> [emphasis in original, footnotes omitted]

[30] Mr. Nourhaghighi also alleges that the Crown has filed false affidavits stating that the affidavits of Carmelita Butts and the Application Record were duly served upon him. He asks that the application be dismissed with costs to be paid forthwith, or in the alternative that the Butts affidavits and Application Record be duly served with cost sanctions for filing false affidavits.

[31] Mr. Nourhaghighi made several points in oral argument which I will refer to and deal with in the analysis below.

ANALYSIS

[32] In view of some of the evidence and Court records before me that suggest that Mr. Nourhaghighi's conduct before the Court has been disrespectful, I would like to make it clear at the outset that, in his appearance before me for these applications, he conducted himself in a way that was entirely appropriate. He revealed himself to be knowledgeable about Court procedures, which he followed immaculately, he followed my instructions and answered my questions, he did not

interrupt opposing counsel and, generally speaking, he provided the Court with relevant and helpful points to consider.

[33] From what I can gather from the record, and from what he told me in Court, I surmise that Mr. Nourhaghighi has experienced general frustration since coming to Canada from Iran in that he has not been able to achieve the professional standing here he enjoyed in his home country, and he feels that he and his family have been thwarted and mistreated in various ways by the Canadian system. In my view, not all of the litigation he has engaged in over the years has been without merit and he appears to have achieved some substantive success, notably in gaining the Court's assistance in his citizenship application and in his judicial review application before Justice Lemieux that dealt with his complaint against CSIS (see *Nourhaghighi (2005)*, above). Of course, he was also successful in the previous s. 40 applications that were dealt with by Justice Campbell (1999) and Justice O'Keefe (2007). These successes do not mean that, on the full record before me, he has not become at this point in time a vexatious litigant, although they are a factor I have considered carefully in reaching my judgment. Any success he has achieved, however, is far outweighed by the enormous amount of groundless and unsuccessful litigation he has brought before the Court.

[34] Mr. Nourhaghighi presented himself before me as intelligent, highly articulate and tenacious. These are positive traits but, of course, if used in the wrong way they can lead to problems, and I fear that is what has happened here.

[35] No one has any intention of denying Mr. Nourhaghighi access to the Federal Court. Under s. 40(3) of the Act, he is entitled to apply at any time for a rescission of an order made under s. 40(1),

and under s. 40(4), even when the order is in place he can commence and continue proceedings provided he can satisfy the Court that the proceeding is not an abuse of process and there are reasonable grounds for such a proceeding. Section 40 simply allows the Court to control abusive and vexatious litigation.

Preliminary Issues

[36] In oral argument, Mr. Nourhaghighi raised two general issues before me that he feels prevent the Court from granting the applications.

[37] First of all, he says that the Applicants have not complied with s. 40(2) of the Act in that, although the Attorney General's consent for the application has been granted, it has not been granted by the "correct branch" of the Attorney General, and there is no proof that the Attorney General has been served with the full application record. As I noted in Court, there are no separate "branches" of the Attorney General, and as the materials filed show, it is the Deputy Attorney General who is appearing for the Crown. I am aware of no legal or practical reason that, on the facts before me, prevents the Crown and the Law Society from obtaining the consent of the Attorney General of Canada to these proceedings, which has been done.

[38] Secondly, Mr. Nourhaghighi says that an order under s. 40(1) of the Act will breach his rights under s. 11(d) of the Charter because a prosecution should have finality and Justice Campbell and Justice O'Keefe have already decided that he is not a vexatious litigant.

[39] I would note that the argument about finality has greater relevance to s. 11(h) of the Charter, which guarantees a right "if finally acquitted of [an] offence, not to be tried for it again." Section 11(d) relates to the right "to be presumed innocent until proven guilty according to law in a fair and public hearing by an independent and impartial tribunal," which Mr. Nourhaghighi alluded to in his brief written submissions.

[40] In any case, neither s. 11(d) nor s. 11(f) has any relevance here, because this is not a prosecution. As the opening words of s. 11 make clear, the rights set out in s. 11(a) to (i) of the Charter apply to "[a]ny person charged with an offence." That is, they apply to persons charged with "criminal, quasi-criminal and regulatory offences": *R v Wigglesworth*, [1987] 2 SCR 541 at 554 [*Wigglesworth*]. A proceeding qualifies as a criminal or penal prosecution so as to trigger the rights in s. 11 if "by its very nature it is a criminal proceeding or… a conviction in respect of the offence may lead to a true penal consequence": *Wigglesworth*, above, at 559. Neither test is met here. Mr. Nourhaghighi is not being tried for any criminal or quasi-criminal conduct, and no true penal consequence – defined by the Supreme Court as "imprisonment or a fine which by its magnitude would appear to be imposed for the purpose of redressing the wrong done to society" (*Wigglesworth*, above, at 561) – can arise from this proceeding. Rather, the only consequence that can arise is that Mr. Nourhaghighi will have to take additional procedural steps before initiating new proceedings in this Court, in order to convince the Court that such proceedings are not devoid of merit or an abuse of process.

[41] Given the intent of the provision to "protect the public interest in the integrity and fairness of the legal system, by preventing the use of court time and resources for improper purposes" (*Adams*,

above; *Olympia Interiors*, above), it would make no sense if, having survived a previous s.40 application, Mr. Nourhaghighi could not at some future date face a further application if his conduct warrants. The Court must examine the full record at the time of the application. Just as a vexatious litigant can obtain rescission of a s. 40(1) order under s. 40(3), so a prior refusal of a s. 40 application cannot bar a future application if new facts arise that establish the need for a s.40 order.

The Law

[42] I see no dispute between the parties as to the law that governs a s. 40 application.

[43] Relief under s. 40 is exceptional and must only be granted sparingly. See *Wilson*, above, at para 28.

[44] In *Wilson*, above, the Court made it clear that "vexatious" is broadly synonymous with the concept of abuse of process (para 30).

[45] *Wilson*, above, also makes it clear that, although the categories of vexatious behaviour are not closed, there are well-recognized indicia that the Court needs to examine.

> [31] Other indicia of vexatious behaviour include the initiation of frivolous actions or motions, the making of unsubstantiated allegations of impropriety against the opposite party, legal counsel or the Court, the refusal or failure to abide by rules or orders of the Court, the use of scandalous language in pleadings or before the Court, the failure or refusal to pay costs in earlier proceedings and the failure to pursue the litigation on a timely basis: see *Vojic*, above; *Canada v. Warriner* (1993), 70 F.T.R. 8, [1993] F.C.J. No. 1007; *Canada v. Olympia Interiors Ltd.*, [2001] F.C.J. No. 1224, 2001 FCT 859; *Mascan Corp. v. French* (1988), 49 D.L.R. (4th) 434, 64 O.R. (2d) 1 (C.A.); *Foy*, above; *Canada Post Corp. v. Varma* (2000), 192 F.T.R. 278, [2000] F.C.J. No. 851; and *Nelson v. Canada (Minister*

> *of Customs and Revenue Agency),* [2002] F.C.J. No. 97, 2002 FCT 77.

[46] The law also directs that the Court is not restricted to considering conduct in the Federal Court system and may consider evidence of proceedings in other courts. See *Mazhero*, above, at para 13.

Application of the Law to the Facts of this Case

[47] My review of the record before me leaves me in no doubt that the Applicants have established that Mr. Nourhaghighi is a vexatious litigant. Mr. Nourhaghighi has a long history of abusing the Federal Court system that includes the following:

(a) Bringing multiple proceedings with no chance of success;

(b) Claiming relief that the Court has no power to grant;

(c) Failing to prosecute claims with diligence;

(d) Making outlandish, scandalous and groundless allegations;

(e) Using abusive and inflammatory language;

(f) Attempting to have counsel who act against him held in contempt of Court;

(g) Attempting to have judges who decide against him joined to contempt proceedings and accusing them of "obvious bias" and "professional misconduct";

(h) Disrespectful and disruptive behaviour before the Court.

[48] In recent proceedings before Prothonotary Aalto, Mr. Nourhaghighi was found to have acted disrespectfully and to have misled the Court. Prothonotary Aalto found as follows:

> Mr. Nourhaghighi's conduct was nothing short of contemptuous and disrespectful in light of the fact that he refused to stop talking and respond properly to the directions of the Court. Mr. Nourhaghighi's

> conduct brings the administration of justice into disrepute when he endeavours to direct this Court process without regard to courtroom decorum and directions of the Court.

[49] My reading of the transcript of the proceedings before Prothonotary Aalto leads me to conclude that this is not an inaccurate or unfair finding.

[50] Mr. Nourhaghighi has also conducted himself in a vexatious manner in other Courts. In *R. v Nourhaghighi*, [2007] OJ No 44, 72 WCB (2d) 646, Justice Epstein recounted Mr. Nourhaghighi's "long history of legal proceedings" in the criminal law context, and as long ago as 1997 Justice Wilkins of what was then the Ontario Court (General Division) declared Mr. Nourhaghighi to be a vexatious litigant. Justice Wilkins' assessment and conclusion were confirmed by the Ontario Court of Appeal.

[51] Mr. Nourhaghighi has attempted to rationalize his past behaviour before me, but I am not in a position to second guess Justice Epstein or Justice Wilkins.

[52] I find particularly vexatious Mr. Nourhaghighi's practice of naming individuals and entities who have nothing to do with the matter in hand and driving them into litigation, and his attacking Court administration staff, opposing counsel - and now judges – with contempt and other proceedings without any evidentiary basis. This places an enormous stress and cost upon faultless individuals and organizations and adds a significant unnecessary burden to the Federal Court system.

[53] As the Crown points out:

> [19] On March 6, 2012, Mr. Nourhaghighi commenced an application for judicial review under sections 18.1(1)(a) and 18(4)(2) of the *Federal Courts Act*, challenging a decision made by visa officer at the Canadian Embassy in Iran, dated February 6, 2012, wherein the visa officer refused Farzad Nour Haghighi's (Mr. Nourhaghighi's nephew) application for a Visitor Visa. Mr. Justice Near struck this application as Mr. Nourhaghighi had failed to first seek leave pursuant to s.72(1) [o]f the *Immigration and Refugee Protection Act*. Mr. Nourhaghighi then brought a motion pursuant to Federal Court Rule 399(2)(b) alleging fraud on the part of the Crown.
>
> [20] Pursuant to the above-noted application for judicial review, Mr. Nourhaghighi brought multiple motions for contempt of court against the Minister of Citizenship and Immigration and many of his solicitors who worked on the file, the Courts Administration Service, its solicitors and various of its employees, as well as the Law Society of Upper Canada, the Attorney General of Canada, the University of Toronto and Her Majesty the Queen in Right of Canada, none of whom had any interest in the underlying application. On September 18, 2012, Mr. Justice Near dismissed Mr. Nourhaghighi's motions for contempt, noting that they had "absolutely no merit".
>
> [21] On September 19, 2012, Mr. Nourhaghighi sought to file another motion on substantially the same grounds, but named Mr. Justice Near as an additional contemnor. Mr. Justice Rennie ordered the Registry not to accept the motion and invited the responding parties to consider an application under s.40 of the *Act*.

[54] We now have a situation where Mr. Nourhaghighi has shown no compunction about filing public documents that contain scandalous allegations against a Prothonotary, a judge of the Court, and even unrelated parties who have no real way to counter these groundless accusations. Mr. Nourhaghighi has offered no explanation or excuse for this aspect of his behaviour. Costs have been awarded against Mr. Nourhaghighi but it appears he is not in a position to pay them, so they are no

real deterrent. Mr. Nourhaghighi is, in fact, using the Court process to defame and malign innocent parties. This cannot be allowed.

[55] Mr. Nourhaghighi relies upon the fact that Justice Campbell declined to issue a vexatious litigant order against him in 1999 and, in 2007, Justice O'Keefe granted Mr. Nourhaghighi's motion to strike an application that sought to have him declared a vexatious litigant at that time. However, a significant amount of water has flowed under the bridges since Justice Campbell and Justice O'Keefe looked at this issue. It is notable that, in the recent groundless litigation involving a motion for contempt in which Mr. Nourhaghighi named unrelated individuals and organizations, and even attempted to join Justice Near as a "contemptor," Justice Rennie had to step in and direct that the Registrar not accept the materials and felt the need to invite "counsel to consider whether an application should be made pursuant to s.40 of the *Federal Court Act*." This is the application that is before me.

[56] When Justice Campbell looked at this issue in 1999, he declined to address whether "the respondent can be said to have instituted vexatious proceedings or conducted a proceedings in a vexatious manner" and declined to make the order on the following basis:

> [4] I find that the discretion which I have to grant an application under s. 40(1) should be exercised contextually, and, therefore, with regard to the respondent's objective in bringing Court action, as well as the form and substance of the actions themselves. During the course of the three hour hearing held on the present application, I had a good opportunity to assess these factors, and, as a result, can make the following observations:
>
> 1. The respondent is an intelligent and articulate individual who honestly believes that he has been wronged in a number of ways, including by agents of the Government and the Courts;

2. The respondent honestly believes that a conspiracy exists between the Government and the Courts to inhibit his ability to seek and obtain justice;

3. The respondent is very frustrated at not having yet gaining an opportunity to have his grievances fully heard, and to have a decision rendered on their merits;

4. The respondent does respond to reasonable procedural requests when treated in a respectful manner.

[57] In view of the subsequent and more recent conduct of Mr. Nourhaghighi, Justice Campbell's approach has not proved workable. As matters now stand, the integrity of the Court and the delivery of justice will suffer if the Court does not act, and there is every reason to believe that the "normal process" relied upon by Justice Campbell is not workable. In addition, there is an immediate need to act because Mr. Nourhaghighi has now demonstrated that he has no compunction about naming and joining unrelated parties to his litigation, and attacking opposing counsel and judges with groundless contempt proceedings.

[58] When Justice O'Keefe addressed Mr. Nourhaghighi's motion to strike, he felt that the s.40 application could not succeed:

> [13] I have reached this conclusion because:
>
> 1. The respondent had no matters before this Court when the applicant's application was filed nor at the date of the hearing of this motion.
>
> 2. According to the applicant's arguments before me, the respondent has in the past, filed three applications, two actions, 20-plus motions and several appeals.
>
> 3. According to the respondent, he was successful on some of the matters.

[59] I have a much fuller record – including most recent vexatious litigation conducted by Mr. Nourhaghighi – than was before Justice O'Keefe, and it is now clear that Mr. Nourhaghighi has not often been a successful litigant, and has consistently engaged in unnecessary, groundless and vexatious litigation.

[60] I see nothing in s.40 of the Act that requires there to be active litigation between the parties at the time of the application and, as the Ontario Court of Appeal has made clear, vexatious litigant proceedings in general are aimed at the litigant and not the litigation; they are "separate proceedings focused on the conduct of the litigant." See *Kallaba*, above, at para 115, per Lang JA dissenting but not on this point; applied in *Coote*, above, at para 76; and *Yae v Park*, 2013 ONSC 1331 at para 19. This Court has previously noted that due to the similarity of the vexatious litigant provisions in the Act and the Ontario *Courts of Justice Act*, guidance can be obtained from Ontario judgments: *Canada v Mennes*, 2004 FC 1731 at para 76; *Vojic*, above.

[61] It may be that the Ontario courts have placed more emphasis on the separateness of vexatious litigant proceedings than have the Federal courts. For example, the Federal Court of Appeal has found that such proceedings can be initiated through an interlocutory motion (see *Nelson*, above at para 22), while the Ontario Court of Appeal has found that these are separate proceedings that must be initiated through a separate application: see *Lukezic v Royal Bank of Canada*, 2012 ONCA 350. However, despite this difference in emphasis, I see nothing in *Nelson,* above, or the cases that have followed it that calls into question the more fundamental point, consistent with the Ontario jurisprudence, that s. 40(1) is aimed at protecting litigants and the judicial system from the risk of repeated vexatious conduct by those who have shown a propensity

for it. This is clear from the text of the provision itself, which contemplates not only vexatious conduct within a single proceeding, but also patterns of vexatious conduct in bringing multiple vexatious proceedings, and bars the initiation of new proceedings as well as the continuance of existing ones except with leave. Indeed, as the Federal Court of Appeal has noted, it is rare that such orders arise out of a single proceeding, and much more common that they arise out of a pattern of conduct involving several proceedings: *Campbell v Canada*, 2005 FCA 49 at paras 19-22. Thus, in my view, s. 40(1) is not about dispensing with any particular vexatious proceeding, for which there are other less far-reaching mechanisms under the Act and the Rules. Rather, a s. 40(1) order is an "extraordinary remedy" that protects "the integrity of the administration of justice" and protects others "against being indiscriminately made the subjects of vexatious proceedings": *Canada Post*, above, at paras 20-21. In my view, it follows that there is no requirement that there be active litigation between the parties at the time of the application, as this would subvert the purpose of the provision in protecting against future repetition of vexatious conduct.

[62] In the present case, this application was precipitated because Mr. Nourhaghighi brought two motions seeking to have multiple persons declared to be in contempt of Court. Justice Near ruled that "In my view after reviewing the evidence before me there is absolutely no merit to the Applicant's [Respondent's] position with respect to any of the named persons." As Justice Dawson pointed out in *Olympia Interiors*, above, at paras 53 and 61, actual vindictiveness or malice is not a pre-requisite for vexatiousness. So even if Mr. Nourhaghighi believes the scandalous things he alleges against others, this does not prevent him from being vexatious because, as the record before me shows, there is little or nothing to support most of his allegations and they have no chance of success.

[63] Mr. Nourhaghighi's reaction to Justice Near's decision was simply to attempt to re-file the same materials, naming the same defendants, but also adding Justice Near as a defendant, and an order for contempt was sought against Justice Near. The only reason there is no active litigation between the parties is because Justice Rennie stepped in and directed the Registry not to accept the documentation. There is nothing before me to suggest that, if I do not grant the order sought by the Applicants, Mr. Nourhaghighi will not continue his abuse of innocent individuals and organizations and the Federal Court system whether or not there are genuine issues to be litigated. Justice Campbell was persuaded that the system could still handle Mr. Nourhaghighi's vexatious conduct without a s. 40 order back in 1999. I am not so persuaded. Mr. Nourhaghighi has demonstrated that he can be a highly vexatious and disrespectful litigant and, if he is not controlled, he will bring the administration of justice in this Court into disrepute and cause harm to innocent individuals and institutions.

JUDGMENT

THIS COURT grants both applications and declares and orders as follows:

1. The Respondent, Major Keyvan Nourhaghighi, is a vexatious litigant pursuant to section 40 of the *Federal Court Act*;
2. The Respondent is hereby barred from initiating any further proceedings in the Federal Court, except with leave of the Court;
3. Any proceedings brought by the Respondent in the Federal Court and presently underway in this Court are hereby stayed, pending leave of the Court to proceed;
4. The Respondent will pay the Applicants their costs in both applications;
5. This Order will be placed on both files T-2285-12, and T-6-13.

"James Russell"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-2285-12
STYLE OF CAUSE:	HER MAJESTY THE QUEEN v MAJOR KEYVAN NOURHAGHIGHI
AND DOCKET:	T-6-13
STYLE OF CAUSE:	THE LAW SOCIETY OF UPPER CANADA v MAJOR KEYVAN NOURHAGHIGHI

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: JANUARY 20, 2014

REASONS FOR JUDGMENT AND JUDGMENT: RUSSELL J.

DATED: MARCH 14, 2014

APPEARANCES:

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