

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20140630**

**Docket: A-135-14**

**Citation: 2014 FCA 175**

**Present: SHARLOW J.A.**

**BETWEEN:**

**LARRY PETER KLIPPENSTEIN**

**Appellant**

**and**

**HER MAJESTY THE QUEEN**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 30, 2014.

**REASONS FOR ORDER BY:**

**SHARLOW J.A.**



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**REASONS FOR ORDER**

**SHARLOW J.A.**

[1] The appellant Larry Peter Klippenstein has brought five motions within his appeal of the order of Justice Boivin confirming an order striking Mr. Klippenstein's statement of claim in T-874-13. For the reasons that follow, four of the motions will be dismissed and one will be allowed only in part. No costs will be awarded.

**Background facts**

[2] Mr. Klippenstein filed his statement of claim in T-874-13 in 2013 to challenge what he considered to be an injustice relating to the requirements imposed on him with respect to an affidavit he submitted in support of a prior proceeding in the Federal Court (T-1744-12). That prior proceeding was an application for judicial review filed by Mr. Klippenstein to challenge the

dismissal of a human rights complaint. He submitted an unsworn affidavit in support of his application, explaining to the Registry staff that that he could not swear his affidavit on the Bible provided by the Court because it was not an undefiled Bible, and he could not affirm the affidavit because that would be an offence to his conscience as a person of the Mennonite faith. The record before me does not disclose the basis upon which Mr. Klippenstein could be satisfied that a particular Bible or a particular edition of the Bible is undefiled.

[3] The Registry sought the direction of a judge regarding the unsworn affidavit. Justice Gleason directed Mr. Klippenstein to obtain access to an undefiled Bible and swear on it, or to affirm the affidavit. Mr. Klippenstein did not follow that direction. In April of 2013, Chief Justice Crampton issued a notice of status review requiring Mr. Klippenstein to explain why his application should not be dismissed for delay. Mr. Klippenstein filed nothing in response. On April 30, 2013, Justice Manson dismissed the application for delay.

[4] Mr. Klippenstein subsequently notified the Federal Court that he had not received the notice of status review. Justice Manson directed Mr. Klippenstein either to bring a motion to set aside the April 30, 2013 order, or to appeal the order to the Federal Court of Appeal. Mr. Klippenstein did neither, but instead filed an application to the Supreme Court of Canada for leave to appeal the judgment dismissing his application for judicial review (Supreme Court File 35436). That application was dismissed on October 17, 2013.

[5] Meanwhile, on May 16, 2013, Mr. Klippenstein filed a new statement of claim commencing an action against the Crown. That is the action underlying the present appeal. In

that statement of claim, Mr. Klippenstein sought among other things an order declaring the Registry in Winnipeg to be in contempt of court, and an interim order providing a means by which his affidavit could be sworn or affirmed in a manner that is consistent with his religious beliefs and conscience.

[6] On June 17, 2013, the Crown filed a motion to strike the statement of claim. That motion was granted by a Prothonotary. His order was confirmed by Justice Boivin in the order under appeal in this proceeding. This appeal has progressed to the point where a requisition for hearing has been filed.

#### The present motions

[7] Before me are the following motions of Mr. Klippenstein:

- (a) motion submitted May 12, 2014 for interim relief from the requirement to pay rent;
- (b) motion submitted May 14, 2014, to challenge a direction of Pelletier J.A. and for an order prohibiting Pelletier J.A. from further involvement in this proceeding;
- (c) motion submitted May 14, 2014 for an oral hearing of his motions;
- (d) motion submitted May 16, 2014 for directions on the procedure for filing of motions by Mr. Klippenstein; and
- (e) motion submitted June 5, 2014 for an order setting aside the memorandum of fact and law of the Crown and prohibiting the Crown from serving documents on Mr. Klippenstein in any manner not specifically described in the *Federal Courts Rules*.

[8] By letter to the Court dated June 4, 2014, counsel for the Crown advised the Court that the Crown takes no position on the first four motions. The Crown has not filed a motion record in response to the fifth motion.

*(a) Interim relief from the requirement to pay rent*

[9] It appears from the material filed by Mr. Klippenstein that he is involved in a controversy over his right to occupy a certain residence in Winnipeg. The record indicates that he has been advised that in order to keep his claim alive he must continue to pay the rent, but he does not have the means to do so, and he is seeking relief from this Court.

[10] After reviewing the record, I am unable to discern any basis upon which I can reasonably conclude that this Court has the jurisdiction to make the order sought by Mr. Klippenstein. There is nothing in the record to suggest there is any federal law that could possibly govern the matter of Mr. Klippenstein's occupation or use of the residence in issue. It would appear that Mr. Klippenstein's residential tenancy dispute is governed by the laws of Manitoba, and is a matter for the appropriate Manitoba court or tribunal.

[11] I observe as well that Mr. Klippenstein's residential tenancy dispute is not legally connected to the appeal now before this Court or the proceeding in the Federal Court to which it relates. It may be that residential tenancy dispute is relevant to the human rights complaint that led Mr. Klippenstein to file his first application for judicial review in the Federal Court, but that proceeding is now finished. And, as far as I can determine from the material before me, there is

no proceeding now pending in the Federal Court in which the residential tenancy dispute is legally relevant. Accordingly, this motion will be dismissed.

*(b) Direction of Pelletier J.A. and his further involvement in this proceeding.*

[12] The background facts relating to this motion are as follows. By letter to the Court dated April 1, 2014, Mr. Klippenstein asked for directions because the Manitoba Court of Queen's Bench had declared him to be under a legal disability, but he had no one to act as his litigation guardian in the present appeal. He did not say at that time, but says in support of the present motion, that the committee or substitute decision maker who has the right to conduct litigation on his behalf has declined to act in this matter, and he has no means of obtaining other legal assistance. Justice Pelletier directed as follows on April 14, 2014:

Mr. Klippenstein seeks directions from the Court, having regard to the fact that he has, it seems, been declared to be a person under a handicap by the Manitoba Court of Queen's Bench. That determination is not binding on this Court though it is a factor to be taken into account if events show that Mr. Klippenstein lacks the capacity to conduct litigation.

While it does appear that Mr. Klippenstein has no understanding at all of the functioning of the Court system, this is not evidence of lack of capacity. Furthermore, the issues in the litigation currently pending before the Court are not such that they would justify the appointment of a litigation guardian.

Mr. Klippenstein will have to carry on as best he can under the circumstances.

[13] Mr. Klippenstein submits that, contrary to Justice Pelletier's conclusion, this Court is bound by the determination of the Manitoba Court of Queen's Bench that he is under a legal disability. He relies on Rules 7.01 and 15.01(1) of the Manitoba *Court of Queens Bench Rules*, Man. Reg. 553/88, subsection 39(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7, and Rule 121 of the *Federal Courts Rules*. SOR/98-106.

[14] I respectfully disagree with Mr. Klippenstein. In my view, the direction of Justice Pelletier is not based on an error of law or a misunderstanding of the legal effect of the declaration of the Manitoba Court of Queen's bench. Before this Court may grant any relief in respect of the legal disability of a litigant, it must be satisfied, on the basis of evidence, that the relief is justified. In this case, the fact that the Manitoba Court of Queen's Bench had declared Mr. Klippenstein to be under a legal disability does not, by itself, permit or require this Court to take any particular steps to ensure that he has legal representation in this appeal. Accordingly, this motion will be dismissed.

*(c) Oral hearing of motions*

[15] In this Court, motions are normally dealt with under Rule 369 of the *Federal Courts Rules* on the basis of documents in motion records submitted by the parties. Oral hearings on a motion are rare, and are permitted only when a judge determines that oral submissions would be of assistance to the Court because of unusual complexity or other special circumstances. In this case, I have no reason to conclude that an oral hearing is required for Mr. Klippenstein's motions. Accordingly, this motion will be dismissed.

*(d) Procedure for filing of motions*

[16] Mr. Klippenstein has filed this motion because, despite his best efforts to understand the relevant provisions of the *Federal Courts Rules*, it appears to him that the procedure followed with respect to the receipt and filing of his motions, and the failure to set a date for an oral hearing of his motions, is inconsistent with the *Federal Courts Rules*. He also complains that he has not been properly informed about the payment of fees on the filing of a motion.

[17] It appears to me that there are three problems underlying this motion. The first problem is that the Registry received Mr. Klippenstein's motion records but did not formally file them on the same day and Mr. Klippenstein does not understand why. The answer is that the Registry sought the direction of a judge (which happened to be me) as to whether the motion records should be filed. The Registry has the discretion to seek such directions in any number of situations, but in this case it appears that the directions were sought because the motion records submitted by Mr. Klippenstein sought relief that was unusual. I directed the motion records to be filed on June 3, 2014, and that is the date on which they were filed.

[18] The second problem is that Mr. Klippenstein was not aware that the usual practice in this Court, as explained above, is that oral hearings on motions are the exception and not the rule.

[19] The third problem is that Mr. Klippenstein is not familiar with the tariff of fees in the *Federal Courts Rules*. For most motions, there is no filing fee. However, there is a filing fee for some motions (for example, a motion for an extension of time to start a proceeding, a motion for leave to commence a proceeding, a motion for summary judgment or summary trial), but none of the motions of Mr. Klippenstein required a filing fee.

[20] With this explanation, it appears to be that no directions are required with respect to the filing of motions by Mr. Klippenstein. Accordingly, this motion will be dismissed.



*(e) Motion to set aside the Crown's memorandum of fact and law and directing the method of service of documents on Mr. Klippenstein.*

[21] The complaint underlying this motion is that the Crown served its memorandum of fact and law on Mr. Klippenstein by slipping it under his door, when they knew or should have known that service in that manner was upsetting to him.

[22] I have no reason to doubt Mr. Klippenstein's assertion that he suffered distress at the manner in which the Crown served the memorandum of fact and law on him. However, the rules for non-personal service permit a document to be "left at the party's address for service", which on its face would appear to permit slipping it under the door of the party's address for service. Since Mr. Klippenstein has received the memorandum of fact and law, there is in my view no reason to strike the Crown's memorandum of fact and law.

[23] That said, it seems to me that in light of Mr. Klippenstein's personal circumstances, there is no reason why the Crown should not accommodate him in future by avoiding a method of service that he finds distressing, as long as he is not shown to be avoiding service. I will make an order to that effect. In all other respects this motion will be dismissed.

"K. Sharlow"

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J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-135-14

**STYLE OF CAUSE:** LARRY PETER KLIPPENSTEIN v.  
HER MAJESTY THE QUEEN

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

**REASONS FOR ORDER BY:** SHARLOW J.A.

**DATED:** JUNE 30, 2014

**SOLICITORS OF RECORD:**

n/a

FOR THE APPELLANT  
SELF REPRESENTED

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