

Date: 20081211

Docket: A-292-07

Citation: 2008 FCA 397

**CORAM: SEXTON J.A.
EVANS J.A.
RYER J.A.**

BETWEEN:

IRVINE FORREST

Appellant

and

**SENIOR DEPUTY COMMISSIONER DON HEAD OF
CORRECTIONAL SERVICE OF CANADA AND
THE ATTORNEY GENERAL OF CANADA**

Respondents

Heard at Toronto, Ontario, on December 11, 2008.

Judgment delivered from the Bench at Toronto, Ontario, on December 11, 2008.

REASONS FOR JUDGMENT OF THE COURT BY:

RYER J.A.

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REASONS FOR JUDGMENT OF THE COURT
(Delivered from the Bench at Toronto, Ontario, on December 11, 2008)

RYER J.A.

[1] This is an appeal from a decision of Kelen J. (T-1910-06) dated May 8, 2007, granting a motion brought by the Attorney General of Canada declaring that Mr. Irvine Forrest is a vexatious litigant and ordering that no further proceedings be instituted by him in the Federal Court and that previously instituted proceedings in the Federal Court shall not be continued except with leave of the Federal Court.

[2] The decision of the motions judge was made pursuant to subsection 40(1) of the *Federal Courts Act*, R.S.C. 1985, c. F-7. That provision reads:

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 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.

[3] Thus, it appears that the decision of the motions judge is a discretionary one.

[4] In *Canada v. Olympia Interiors Ltd.*, 2004 FCA 195, this Court described the basis for appellate review of such a discretionary decision. At paragraph 8 of that case, Stone J.A. stated:

This Court must yet be satisfied that the Federal Court has exercised its section 40 discretionary power in making the order under appeal. On an appeal such as this from a discretionary order of a trial judge, the test for review as stated by the Supreme Court of Canada is whether “the judge at first instance has given sufficient weight to all relevant considerations”: *Reza v. Canada*, [1994] 2 S.C.R. 394, at page 404.

[5] On the basis of the extensive materials that were before, and were reviewed by, the motions judge, indicating the number and nature of the judicial proceedings commenced by Mr. Forrest and their results (including the fact that two of those proceedings were found to be vexatious proceedings) and notwithstanding the submissions of counsel for Mr. Forrest, we have not been persuaded that the motions judge failed to give sufficient weight to any relevant consideration in

exercising his discretion under subsection 40(1) of the *Federal Courts Act* or otherwise made any error that warrants our intervention in relation to his decision.

[6] For these reasons, the appeal will be dismissed with costs.

“C. Michael Ryer”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-292-07

(APPEAL FROM AN ORDER OF KELEN J., DATED 08-MAY-07, DOCKET NO. T-1910-06)

STYLE OF CAUSE: *IRVINE FORREST v. SENIOR
DEPUTY COMMISSIONER DON
HEAD OF CORRECTIONAL
SERVICE OF CANADA AND THE
ATTORNEY GENERAL OF CANADA*

PLACE OF HEARING: TORONTO, ONTARIO

DATE OF HEARING: DECEMBER 10, 2008

REASONS FOR JUDGMENT OF THE COURT BY: (SEXTON, EVANS, RYER JJ.A.)

DELIVERED FROM THE BENCH BY: RYER J.A.

APPEARANCES:

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