Federal Court  Cour fédérale

Date: 20170301

Docket: T-1725-15

Citation: 2017 FC 251

BETWEEN:

BRADLEY HUNT

Plaintiff
(Responding Party)

and

HER MAJESTY THE QUEEN

Defendant
(Moving Party)

REASONS FOR ORDER

PHELAN J.

I. Introduction

[1] This is a motion by the Defendant pursuant to s 40(1) of the *Federal Courts Act*, RSC 1985, c F-7, to bar the Plaintiff from continuing with this action and any currently outstanding proceedings and from initiating any new proceeding in this Court without leave of the Court. The Attorney General of Canada has consented to this motion as required under the provision.

The motion was originally filed as a motion in writing under Rule 369, but due to the significance of the relief sought the Court ordered that the hearing be in person to ensure that Mr. Hunt was fully heard.

II. Background

[2] Section 40 is what is currently called a vexatious litigant provision, designed to put some limit on access to the Court where a litigant abuses the Court process. It states:

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.
(2) An application under subsection (1) may be made only with the consent of the Attorney General of Canada, who is entitled to be heard on the application and on any application made under subsection (3).	**(2)** La présentation de la requête visée au paragraphe (1) nécessite le consentement du procureur général du Canada, lequel a le droit d'être entendu à cette occasion de même que lors de toute contestation portant sur l'objet de la requête.
(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	**(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

continue a proceeding.	frappe, soit l'autorisation d'engager ou 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.	**(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.

[3] Section 40 must be read, interpreted, and applied in the context of the right of a citizen to bring matters to court, and where justified in the context of s 7 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, being Schedule B to the *Canada Act 1982* (UK), 1982, c 11 [*Charter*]. It states:

7. Everyone has the right to life, liberty and security of the person and the right not to be deprived thereof except in accordance with the principles of fundamental justice.	**7.** Chacun a droit à la vie, à la liberté et à la sécurité de sa personne; il ne peut être porté atteinte à ce droit qu'en conformité avec les principes de justice fondamentale.

[4] Mr. Hunt has had a long and difficult interaction with this Court and with the parties opposite.

[5] The current motion arises in the context of an action challenging the appointment of Justice Russell Brown to the Supreme Court. However, the motion also arises in the context of thirteen proceedings instituted by Mr. Hunt.

File Number	**Statement of Claim Served**	**Subject Matter**	**Outcome**
T-695-14	March 20, 2014	Medical marijuana	Discontinued
T-1404-14	June 16, 2014	Medical marijuana	Discontinued
T-1548-14	July 2, 2014	Medical marijuana	Struck Out January 11, 2017
T-736-15	May 6, 2015	Related to incarceration at Wellington Detention Center	Struck Out June 24, 2015
T-737-15	May 6, 2015	Seeking to have the decision in *Carter v Canada* brought into "conjunction" with s. 15	Struck Out July 2, 2015
T-738-15	May 6, 2015	Seeking to have the "criminal rules" of the Ontario Court of Justice declared of no force and effect	Struck Out July 2, 2015
T-739-15	May 6, 2015	Seeking to have the Federal Court Rules declared of no force and effect	Struck Out July 2, 2015
T-861-15	May 26, 2015	Related to arrest in 1994 (and subsequent treatment by police and incarceration)	Struck Out July 10, 2015
T-867-15	May 27, 2015	Related to treatment by certain police officers and "Tyler" from the Federal Court reception	Struck Out July 10, 2015
T-1387-15	August 21, 2015	Challenge to appointment of Justice Brown to the Supreme Court of Canada	Struck Out October 13, 2015
T-1402-15	August 21, 2015	Challenge to appointment of Justice Brown to the Supreme Court of Canada	Struck Out October 13, 2015
T-1725-15	October 14, 2015	Challenge to appointment of Justice Brown to the Supreme Court of Canada	Ongoing (**Present Claim**)

File Number	Statement of Claim Served	Subject Matter	Outcome
T-780-16	May 17, 2016	Seeking declaration that the prohibition of psilocybin ("magic mushrooms") is of no force or effect	Ongoing

This list does not include the orders brought against Mr. Hunt for his abuse of the Court, most particularly of Court staff, and the finding of contempt in respect of this Court's Order to prohibit such abuse. It also does not include motions brought and dismissed.

A. *Court Proceedings*

[6] Of the thirteen proceedings instituted in this Court, three related to constitutional challenges to the medical marihuana regulatory regime in Canada. Court File No. T-695-14, along with approximately 330 similar claims based on a template called the "Turmel Kit", was stayed pending the decision in *Allard v Canada*, 2016 FC 236, [2016] 3 FCR 303 [*Allard*]. Mr. Hunt discontinued that claim and commenced a similar claim in T-1404-14 seeking $500 million in damages. That action was stayed and discontinued.

Thereafter, Mr. Hunt commenced a similar proceeding in T-1548-14 seeking $1 billion in damages. Having rendered the *Allard* decision in February 2016, this Court allowed a motion to strike T-1548-14 for mootness.

[7] In May 2015, Mr. Hunt commenced a further six actions in the Federal Court naming Canada as the defendant. These claims raised complaints about his treatment by this Court (me in particular) for having subjected him to cruel and unusual treatment, his incarceration in 1994 in a provincial detention centre, and his inability to use controlled substances in order to self-

medicate. One claim sought to have criminal charges laid against a Guelph Ontario police officer and a Court employee at the Federal Court reception in Toronto.

This is a summary of claims brought and is not exhaustive.

[8] All six claims were struck for not disclosing a reasonable cause of action. Three claims were dismissed with costs, which remain unpaid.

[9] Between August and October 2016, Mr. Hunt commenced three claims attempting to impugn the appointment of Justice Russell Brown to the Supreme Court of Canada. Two identical claims were filed in August, both of which were struck for disclosing no reasonable cause of action. The day after those two claims were struck, Mr. Hunt filed a third claim which was essentially the same as the two that had been struck out. That is the present claim under which this s 40 motion has been brought.

[10] In addition to these claims, Mr. Hunt filed a claim in May 2016 (Court File No. T-780-16) in which he sought to constitutionally challenge the prohibition on psilocybin ("magic mushrooms").

[11] It is not just that Mr. Hunt files repetitive and multiple claims, those claims are replete with allegations and pleadings which are nonsensical, confusing, irrelevant, and often offensive.

B. *Communications with Representatives of the Justice System*

[12] In the course of Mr. Hunt's pursuit of frivolous and vexatious claims, he has developed a history of incessant, abusive, and insulting communications. He engages in inappropriate and abusive conduct and uses derogatory language towards the Court, Court staff, and Crown counsel of a nature and type that would "make a sailor blush". It is not the Court's intention to set out all of these comments in unexpurgated form – the motion record, including the most recent affidavit from the Moving Party, has more than enough unchallenged comments to earn them the description of incessant, abusive, and insulting.

[13] To these allegations can be added "threatening". The following telephone call shows the tenor of some communications:

> That mother… Justice Phelan screwed me and now I am going to have to do something crazy. If terrorists can obtain semi-automatic weapons and start shooting on Parliament Hill, then I will get a weapon too and come to the court and start … shooting.

He has also threatened to kill himself in public places such as Parliament Hill.

[14] Some of Mr. Hunt's offensive and abusive communications with Court staff are set out in this Court's decisions ordering him to refrain from abusive language (*Hunt v Canada* (26 June 2014), Ottawa T-1404-14 (FC); (14 July 2014), Ottawa T-1548-14 (FC)) and finding him in contempt (*Hunt v Canada*, 2016 FC 226).

[15] In communications to and about Crown counsel, Mr. Hunt's e-mails include allegations of wrongdoing and impropriety. Similar allegations are made against Court staff. He also refers

to counsel as “coward”, “ignorant”, “dirty f…k”, “Nazi Attorney”, “scum”, “corrupt”, “dumb”, “a…hole”, and worse.

[16] Several of Mr. Hunt’s communications with Crown counsel contain threats of future litigation, threats of retaliating action including interrupting Court proceedings in various Ontario courts and elsewhere, and threats of litigation against Crown counsel personally. Between February 25 and May 11, 2016, Crown counsel received upwards of 35 e-mails from Mr. Hunt, many abusive in tone and content. That pattern has continued up to the hearing of this matter.

[17] Despite warnings and orders from this Court, Mr. Hunt has expressed an intention to continue along this path and to continue to file further litigation. The following are examples of communications exhibiting this intent:

> Im done playing games with you and your corrupt court system… im not leaving til i have an order or i go to jail.
>
> Like I told the federal court my new goal in life is to create and win as many constitutional battles as possible.
>
> So my son and I are going to repeatedly submit claims to your Federal court til you play by the rules.

[18] Mr. Hunt continued in this vein as recently as the Court hearing last week. He sees himself, as he says, burdened with a “duty” to bring these challenges if he perceives some wrongdoing. He claims that this duty includes the bringing of these matters to Court to have them properly resolved. When these matters are not resolved in his favour, this “duty” requires him to continue filing new claims until he has resolution on terms he thinks are appropriate. There appears to be no end in sight to these types of claims.

C. *Violation of Previous Court Orders*

[19] In an effort to control the abusive language and conduct toward Court staff which mirrors that directed at Crown counsel, this Court issued an Order in T-1404-14 directing Mr. Hunt:

> … to cease and desist in communicating or describing the Court and Registry staff in terms as above or similar terms and to cease and desist all abusive, insulting and offensive communication with the Court, whether in writing, orally, or in any other manner.

[20] Because of continued inappropriate communication, Mr. Hunt was ordered to communicate with the Court and staff in writing only.

[21] In late July 2014, Mr. Hunt was again warned about his communication with Court staff.

[22] On October 13, 2015, contempt proceedings were commenced against Mr. Hunt by the Attorney General of Canada. He was found in contempt and sentencing was postponed to allow Mr. Hunt to take an anger management program. The Court found that Mr. Hunt had acted deliberately and knowingly in breach of the Court's earlier order.

> Mr. Hunt was extremely unhappy with his action being stayed and he took out his frustrations on Registry Office staff …
>
> While every person has a right to represent themselves, it is a right that should not always be exercised. Mr. Hunt's conduct, not only offensive in word and tone, absorbed increasing amounts of court administration and court time. …
>
> As misguided as Mr. Hunt's view of his situation was, his conduct was deliberate. He knew he was breaching a court order. He knew or ought to have known that his words and tone were not only offensive but they upset those staff who received the insults.

> This is a serious matter. It might well have led to jail time as well as a substantial fine had it not been resolved as the Court orders. The goals of rehabilitation and deterrence are encapsulated in the order to undertake anger management counselling. Successful completion and absence of repeat behaviour will purge the contempt. Circumstances may develop that invite revisiting the Orders against Mr. Hunt.

[23] That type of communication has continued. It has been particularly directed at Crown counsel, but includes offensive comments about the Court, staff, and the justice system.

III. Issues

[24] The only substantive issue is whether Mr. Hunt is a "vexatious litigant" such that an Order under s 40(1) should be issued. Mr. Hunt raised recusal and the appointment of counsel as subsidiary issues.

IV. Analysis and Findings

[25] Dealing with the subsidiary issues first, Mr. Hunt asked that I recuse myself because of my involvement in his various matters. He has threatened physical harm and levelled insulting comments toward me.

[26] As inviting as it may be, recusal is an extraordinary act and I can find no justification for it. If familiarity with matters were a hallmark for recusal, or if insulting or threatening a judge were grounds for recusal, the administration of justice could become at the very least seriously compromised if not neutered. I can see no reason to recuse myself and I conclude that a person

fully informed of the circumstances would have no reasonable grounds for a “reasonable apprehension of bias”. As pronounced orally, this request was denied.

[27] As to the appointment of counsel and ordering the payment of such counsel, Mr. Hunt has given the Court no basis to make such an order. There is no evidence that he approached Legal Aid and was denied. He had Legal Aid counsel for his contempt proceeding and is aware of how the Legal Aid system can be engaged. The request for counsel was denied.

[28] As to the main issue, I agree with the Moving Party. Mr. Hunt meets all the hallmarks of a vexatious litigant. He meets all of the key characteristics of a vexatious litigant as identified in *Tonner v Lowry*, 2016 FC 230 at para 20, 265 ACWS (3d) 876 [*Tonner*]:

- a propensity to re-litigate matters that have already been determined;
- the initiation of frivolous actions or motions;
- the making of unsubstantiated allegations of impropriety against the opposite party, legal counsel and/or the Court;
- the refusal to abide by rules and orders of the Court;
- the use of scandalous language in pleadings or before the Court; and
- the failure or refusal to pay costs in earlier proceedings and the failure to pursue litigation on a timely basis.

[29] Section 40(1) of the *Federal Courts Act* is an extraordinary remedy that, as the Court of Appeal cautioned in *Olympia Interiors Ltd v Canada*, 2004 FCA 195 at para 6, 131 ACWS (3d) 429, leave to appeal to SCC refused, 30619 (April 21, 2005), “must be exercised sparingly and with the greatest of care”.

The remedy is serious as it interferes with the right to easily engage the judicial system, but it does not have the possible draconian effects of contempt, nor does it deny the right to access the courts; instead, it regulates that access (see *Tonner* at para 19).

[30] As has been held in decisions such as *Canada v Olympia Interiors Ltd* (2001), 209 FTR 182, 107 ACWS (3d) 785 (TD), aff'd 2004 FCA 195, leave to appeal to SCC refused, 30619 (April 21, 2005), and *Canada Post Corp v Varma* (2000), 192 FTR 278, 97 ACWS (3d) 1122 (TD), the Court may look to its own records and history of the litigation, and may take into consideration a litigant's conduct outside of the court including threats of litigation and allegations of impropriety leveled at opposing counsel and the Court.

The history of Mr. Hunt's dealings with the Court and opposing counsel is replete with threats and allegations along with insulting and offensive words and conduct.

[31] In appropriate cases this type of remedy may be necessary to maintain the integrity of the judicial process and to protect the Court and potential parties from frivolous litigation (*Lavigne v Pare*, 2015 FC 631 at para 14, 253 ACWS (3d) 818).

[32] In the instant case, the threats of violence may be overblown but they impact the Court process. Judges are somewhat insulated and protected from these threats, but Court staff and opposing counsel do not enjoy that same measure of protection. Furthermore, in principle and practice no one should be allowed to threaten the judicial process; dissent and criticism are part of the judicial process, but threats and insults are not.

[33] As indicated earlier, Mr. Hunt meets all the characteristics/indicia set forth in *Tonner*, although it is not necessary that all of these must be met to justify an order.

[34] Mr. Hunt relitigates matters decided against him and he has expressed an intention to continue. His attack on Justice Brown's appointment is a prime example of this relitigation phenomenon. It is clearly an abuse of process.

[35] A review of Mr. Hunt's pleadings shows that not only are they frivolous, including claiming relief of hundreds of millions of dollars, but they are often incomprehensible and cite legal sources of little or no relevance.

[36] Aside from threatening comments, Mr. Hunt has made unsubstantiated allegations against counsel and the Court. These have included allegations of corruption, malice, bad faith, and mental incompetency. Neither the Court nor counsel are required to tolerate these insults as part of the litigation process. Previous efforts to curtail this conduct have proven futile. In fact, Mr. Hunt refuses, in many instances, to accept the authority of this Court.

[37] Mr. Hunt has raised but has not made out a coherent claim of interference with his s 7 *Charter* rights.

[38] To the extent that one can make out the gist of his s 7 claim, I find that s 7 is not engaged. If there is any merit to his claim of psychological harm, it has not been established that it is state

action which causes this harm. Mr. Hunt admits to suffering from anxiety and depression for which he says he needs to self-medicate.

[39] The s 40 relief does not bar Mr. Hunt from access to the courts. I do not see that the circumstances of this case would deprive a "person of reasonable sensibility" of their security of the person. Having said that, a person of reasonable sensibility is unlikely to have created the circumstances of this case.

[40] The Court understands that Mr. Hunt is a troubled individual. He no doubt feels the pain and anguish which have led to his conduct. If it was within the power of this Court to remediate his circumstances, it would do so. However, the Court can only deal with the manifestation of his internal turmoil and protect the court process and the people within the justice system.

[41] For all these reasons, the Court has granted the Defendant/Moving Party's motion without costs.

"Michael L. Phelan"
Judge

Ottawa, Ontario
March 1, 2017

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-1725-15
STYLE OF CAUSE:	BRADLEY HUNT v HER MAJESTY THE QUEEN
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	FEBRUARY 24, 2017
REASONS FOR ORDER:	PHELAN J.
DATED:	MARCH 1, 2017

APPEARANCES:

Bradley Hunt	FOR THE PLAINTIFF (RESPONDING PARTY) (ON HIS OWN BEHALF)
Stewart Phillips	FOR THE DEFENDANT (MOVING PARTY)

SOLICITORS OF RECORD:

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