Federal Court Cour fédérale

Date: 20170911

Docket: T-758-17

Citation: 2017 FC 817

Ottawa, Ontario, September 11, 2017

PRESENT: The Honourable Mr. Justice Diner

BETWEEN:

GRANT R WILSON

Applicant

and

CANADA REVENUE AGENCY

Respondent

JUDGMENT AND REASONS

I. Background

[1] In 1991, Canada Revenue Agency [CRA], reversed and seized a tax refund of approximately $500,000 [Seizure] previously paid to the Applicant, Grant Wilson.

[2] Mr. Wilson sought relief in connection with the Seizure through a variety of proceedings over the subsequent years, beginning with an action against CRA in 1999 [the 1999 Action]. The

1999 Action was dismissed, as were ultimately a series of other legal challenges in the form of various unsuccessful appeals, reconsiderations, and related proceedings at this Court and the Federal Court of Appeal, as well as the Ontario Superior Court of Justice, the Tax Court of Canada, and the Supreme Court of Canada, which are summarized below.

[3] Mr. Wilson began a second action against CRA in 2005 [the 2005 Action], again seeking recovery in connection with the Seizure. That action was also dismissed. When Mr. Wilson sought an order granting him an extension of time within which to appeal the dismissal of the 2005 Action, CRA moved for an order under s. 40(1) of the *Federal Courts Act*, RSC 1985, c F-7 [the *Act*] barring Mr. Wilson from continuing the 2005 Action or instituting any further proceeding without leave of the Court.

[4] Mr. Wilson was then found by Justice Barnes to be a vexatious litigant under s. 40(1). He is thus prohibited from instituting or continuing any other proceeding in this Court without leave, which now brings Mr. Wilson to this Court once again, this time in an application under s. 40(3) of the *Act*, which allows a vexatious litigant to apply to the Court for the rescission of that order, or for leave to institute or continue a proceeding.

[5] I note as a preliminary matter that although this proceeding was commenced by Mr. Wilson's originating Notice of Application, it appears to have been treated at times as a motion for scheduling and filing purposes—including having been set down in General Sittings and heard by way of a motion on July 18, 2017. The procedural irregularity is without consequence. The matter was heard on the basis of a full record and my decision finally disposes of the

proceeding commenced by Mr. Wilson's Notice of Application and includes future guidance should Mr. Wilson decide to continue to pursue litigation before this Court.

[6] Mr. Wilson's present application materials seek relief under s. 40(3) of the *Act* (although in submissions he erroneously requested relief under s. 40(c) of the *Act*). His written materials are unclear as to the proceedings he ultimately wishes to commence or continue.

[7] During Mr. Wilson's oral submissions, he raised the following as desired outcomes of this application:

1. a review of the September 2016 costs assessment of Officer Bruce Preston, which relates to the 1999 Action; and
2. a challenge to the Seizure by way of a "counterclaim" to the 1999 Action.

[8] As will be discussed below, there are three significant procedural obstacles that Mr. Wilson must overcome to have any redress of these issues today.

[9] First, before Mr. Wilson may pursue either of his two desired outcomes, he must, under s. 40(3) of the *Act*, secure either a rescission of Justice Barnes' order or obtain leave of the Court to commence or continue his proposed proceedings. For the reasons provided below, he has not persuaded me to provide such relief.

[10] Second, with respect to the costs assessment, Mr. Wilson has missed the deadline within which to file his motion materials and therefore first requires an extension of time under Rule 8 of the *Federal Courts Rules*, SOR/98-106 [the *Rules*].

[11] Third, the 1999 Action ran its course and ended some fifteen years ago. That aside, Mr. Wilson was the plaintiff to that 1999 Action. There is and was nothing and no one for him to "counterclaim" against, because he brought the action.

[12] As Mr. Wilson continues to attempt to relitigate settled matters, the following provides a high-level overview of Mr. Wilson's history in seeking legal redress for the Seizure.

II. Litigation History

[13] For context, I will begin with an overview of Mr. Wilson's dispute with CRA and the circumstances leading to Justice Barnes' order in *Wilson v Canada (Revenue Agency)*, 2006 FC 1535 [*Wilson* 2006]. In *Wilson* 2006, Justice Barnes provided a thorough history of Mr. Wilson's disputes with CRA to that date, the facts of which I have relied upon—at least with respect to those early years of his litigation.

[14] CRA's position was and remains that the Seizure resulted from a refund payment made in error because Mr. Wilson owed more than that amount in tax arrears. Mr. Wilson brought the 1999 Action against CRA seeking recovery of the said refund—and over $60 million in damages.

[15] The 1999 Action was dismissed in 2003 by Justice Hugessen based on Mr. Wilson's failure to properly answer questions and fulfil undertakings on discovery. Justice Hugessen's order stated that orders of the Court appeared to have "no effect" on Mr. Wilson, who also failed

to appear for the hearing before Justice Hugessen although he had been properly served with the motion materials.

[16] Fourteen months later, in 2004, Mr. Wilson moved before Justice Mactavish for a reconsideration of Justice Hugessen's order. Justice Mactavish found that Mr. Wilson had failed to establish a *prima facie* case for setting aside Justice Hugessen's order and had demonstrated a history of delay, obstruction, and non-compliance.

[17] In 2005, Mr. Wilson moved for a reconsideration of Justice Mactavish's order on the basis of purported "new evidence". Justice Mactavish again found against Mr. Wilson, holding that the "new evidence" would not have changed the outcome of her 2004 reconsideration decision.

[18] Mr. Wilson then moved for an extension of time to appeal the 1999 Action. This motion was denied with costs by Justice Létourneau of the Federal Court of Appeal [the FCA] in December 2005, who found Mr. Wilson's conduct to be an abuse of process that ought not to be condoned.

[19] Mr. Wilson then brought the 2005 Action against CRA again seeking recovery of the seized funds. CRA responded with a motion to strike out the 2005 Statement of Claim as being frivolous, vexatious, an abuse of process, and raising issues that had been previously determined. Prothonotary Milczynski granted CRA's motion and dismissed the 2005 Action, finding that the substance of the 1999 Action had been reproduced in the 2005 Statement of Claim, and that the

relief sought—an order of mandamus for payment of a tax refund—could only have been sought by judicial review.

[20] Mr. Wilson then sought to appeal Prothonotary Milczynski's decision but did not file his appeal in time. As such, he moved before Justice Barnes for an order extending the time to file his appeal materials. CRA opposed Mr. Wilson's motion and moved for an order under s. 40(1) of the *Act* barring him from continuing the 2005 Action or commencing any other proceeding.

[21] In *Wilson* 2006, the resulting decision, after reviewing the law pertaining to s. 40(1) of the *Act*, including the hallmarks of the designation of vexatious litigant, Justice Barnes concluded:

> [32] In varying degrees, Mr. Wilson's conduct in this Court has fulfilled every one of the above-noted characteristics of vexatiousness. He is also extremely litigious and I have no doubt that, absent an Order barring further actions against the Crown in this Court, he will continue to advance his unmeritorious cause in this Court. In the result, Mr. Wilson will be barred from bringing any further proceedings in this Court except with leave of the Court. The Crown will have its costs on both motions in the total amount of $1,000.00 payable forthwith.

[22] In 2007, Mr. Wilson attempted to appeal Justice Barnes' s. 40(1) finding to the FCA but again missed the requisite deadline. His motion for an extension of time was dismissed, along with his subsequent request for a reconsideration of that dismissal (Orders of Sharlow J.A., dated July 27, 2007 and November 20, 2007 in File 07-A-25, Respondent's Book of Authorities [RBA] at Tabs 5 and 6).

[23] In 2008, Mr. Wilson sought leave to appeal both FCA orders to the Supreme Court of Canada [SCC], which dismissed his application for leave.

[24] Mr. Wilson then, unsuccessfully, sought a reconsideration of the SCC's dismissal (Order of the SCC, dated May 1, 2008 in File 32437 and Letter from the SCC, dated December 15, 2008 in File 32437, RBA at Tab 7).

[25] This did not end Mr. Wilson's attempts to litigate his grievance relating back to the Seizure. He pursued relief at the Tax Court of Canada within the context of an income tax assessment appeal, which was dismissed in 2010 (Order of Hershfield J., dated August 23, 2010 in File 2009-3157 (IT)I, RBA at Tab 8).

[26] Mr. Wilson also commenced a new action in the Ontario Superior Court of Justice [the Ontario Action]. In *Grant R Wilson v Revenue Canada Agency*, 2011 ONSC 5253, Justice Carey dismissed Mr. Wilson's action and declared him to be a vexatious litigant under s. 140 of the Ontario *Courts of Justice Act*, RSO 1990, c C43, explaining that:

> [2] Mr. Wilson has amassed more court time than many litigation lawyers over the last two decades. The CRA alone has seen three actions and appeals up to the Supreme Court of the Canada. None have been successful and the Federal Court has previously declared him a vexatious litigant. The Department of Justice argues that undeterred he has simply changed courts to re argue matters that have had final disposition.
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> …
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> [5] There is little more than I can add to Barnes and Little J.J.'s comments. I agree with both. In addition to the behaviour continued in this litigation, Mr. Wilson has not paid any of the outstanding costs orders and has continued to take every appeal so far as humanly possible.

[27] Mr. Wilson's appeal of Justice Carey's order was dismissed by the Ontario Court of Appeal [ONCA] in *Wilson v Canada Revenue Agency*, 2013 ONCA 31, in which the Court noted that:

> [1] …The record fully supports the finding that Mr. Wilson is a vexatious litigant. The Federal Court came to the same conclusion in 2006. The claim was, in our view, properly struck given the vexatious litigant finding.

[28] Mr. Wilson next attempted to file for leave to appeal the ONCA's judgment to the SCC but again missed the prescribed deadline for doing so. The SCC dismissed Mr. Wilson's motion for an extension of time, noting that "had such a motion been granted, the application for leave to appeal would have been dismissed with costs" (*Grant R Wilson v Canada Revenue Agency*, 2015 CanLII 1296 (SCC)).

[29] Mr. Wilson has also previously tried in this Court to overcome the s. 40(1) constraints placed on him, and recommence old litigation related to the 1999 Action. For instance, in 2012, Mr. Wilson brought a motion before this Court for "an extension of time to file an 'amended' appellant's application for leave" to seek permission to commence or continue proceedings, a requirement flowing from Justice Barnes' order. Mr. Wilson's motion was dismissed by Justice Bédard (*Wilson v Canada Revenue Agency*, 2013 FC 39 [*Wilson* 2013]).

[30] Mr. Wilson then attempted to appeal *Wilson* 2013 to the FCA, which refused to entertain it (Direction of Gauthier J., dated February 21, 2013, RBA at Tab 12). Justice Bédard also refused to entertain a subsequent reconsideration request as Mr. Wilson had failed to serve and

file his materials within ten days of her order (Direction of Bédard J., dated March 14, 2013 in File 12-T-81, RBA at Tab 13).

[31] Mr. Wilson then attempted to file another motion for an extension of time before this Court, which Justice Harrington rejected (Direction in File 12-T-81 dated April 4, 2013, RBA at Tab 14).

[32] Mr. Wilson also brought a motion for a review of the certificate of assessment issued on the above-noted files. His motion was dismissed by Justice Hughes (Order dated April 22, 2013, in File T-1677-79, RBA at Tab 16).

[33] Mr. Wilson then tried to appeal Justice Hughes' decision to the FCA but again missed the prescribed filing deadline. His motion for an extension of time was dismissed by Justice Sharlow, whose order stated that there was "no possible merit to the appeal" (Order dated June 14, 2013, in File 13-A-20, RBA at Tab 17).

[34] Mr. Wilson's application for leave to appeal Justice Sharlow's decision to the SCC was dismissed with costs (Order of the SCC dated February 26, 2015 in File 36139, RBA at Tab 18).

[35] Later, in 2016, at the request of the SCC Registrar, Justice Karakatsanis issued an order under Rule 67 of the Rules of the Supreme Court of Canada, SOR/2002-156, finding that the filing of further documents would be vexatious and thereby prohibiting Mr. Wilson from filing

documents relating to either the Ontario Action or File No.: T-1677-79 (Order of Karakatsanis J., dated August 18, 2016 in Files 36065 and 36139, RBA at Tab 20).

III. Analysis

[36] I will start with Mr. Wilson's apparent desire to rescind Justice Barnes' order; if rescinded, Mr. Wilson will no longer require leave to commence or continue any proceeding under s. 40(3) of the *Act*. (Of course, Mr. Wilson's other two requests for relief in the current application would still be subject to the requisite tests.) While Mr. Wilson did not expressly seek rescission of Justice Barnes' order in his written materials, there was some discussion of rescission during Mr. Wilson's oral submissions.

[37] An application for rescission of an order made under s. 40(3) of the *Act* is a challenge to the validity of the order. Such an application is distinct from (a) an appeal or (b) a motion for reconsideration—both of which, as described above, Mr. Wilson has attempted in the past on more than one occasion. Rather, an applicant may argue that rescission is justified because the vexatious litigant order was obtained, for instance, on fraudulent grounds, or that it should be changed based on newly-discovered facts (see *Duterville v Glen*, 2016 FC 455 [*Duterville*] at paras 6-9). Improvements in the applicant's conduct, or any lack thereof, are also relevant (*Duterville*, at para 8).

[38] Mr. Wilson's present complaint appears to be that Justice Barnes' order was improperly granted because it was sought on a motion and not on an application. While s. 40(1) of the *Act* does state that a Court may grant an order under that section "on application", "application" has

been held to be broad enough to include both originating applications and motions (*Nelson v Canada (Minister of Customs and Revenue Agency)*, 2003 FCA 127 at para 22; *Mazhero v Fox*, 2011 FC 392 at para 6). A party may therefore seek an order under s. 40(1) by either an application or a motion within an existing proceeding (*Olumide v Canada*, 2016 FCA 287 at para 34).

[39] I am mindful of the orders and directions stating that Mr. Wilson cannot challenge any final decision, including that of Justice Barnes (see for instance the Direction of Gauthier J.A., dated February 21, 2013, RBA at Tab 12). Furthermore, I agree that Mr. Wilson has indeed exhausted all avenues of appeal and reconsideration of Justice Barnes' order and the Seizure litigation that it related back to.

[40] To the extent that Mr. Wilson now seeks the rescission of Justice Barnes' order in this application, I find that he has not provided sufficient evidence upon which to found such a challenge.

[41] I therefore turn to whether leave should be granted to Mr. Wilson under s. 40(3) of the *Act*. First, pursuant to s. 40(4), the Court may only grant leave if satisfied that:

a) the proceeding sought to be instituted or continued is not an abuse of process; and

b) there are reasonable grounds for the proposed proceeding.

[42] Mr. Wilson has the onus of demonstrating that the requirements for an order granting leave are met (*Hainsworth v Attorney General of Canada*, 2011 ONSC 2642 at para 11; see also, in the Federal Court context, *Duterville* at para 11).

[43] As discussed above, while Mr. Wilson's written materials in support of this application are not clear, in his oral arguments Mr. Wilson appears to be seeking leave under s. 40(3) to have Officer Preston's assessment reviewed by this Court, as well as to revive his litigation against CRA by way of a "counterclaim" in the 1999 Action. For the following reasons, the Court will not grant Mr. Wilson leave under s. 40(3) to pursue either of these two proceedings.

A. *Mr. Wilson's Challenge to Officer Preston's Assessment*

[44] Although the 1999 Action was dismissed with costs in 2003, it was not until 2016 that CRA filed a Bill of Costs to be assessed. The assessment was conducted by Officer Preston, who allowed CRA's Bill of Costs at $39,512.78. In his Reasons, Officer Preston reviewed and dealt with the "extensive submissions" filed by Mr. Wilson in response to the assessment (Certificate of Assessment of Costs and Reasons for Assessment of Costs, dated September 28, 2016 in File T-745-99, RBA at Tab 21, para 4).

[45] Mr. Wilson then sought to have this Court review Officer Preston's 2016 assessment. On January 6, 2017, Prothonotary Milczynski issued a direction that Mr. Wilson's materials not be accepted for filing on the basis that the "[r]elief sought appears to go beyond leave for review of assessment officer's assessment of costs and is unclear as to what remedy is sought or the manner in which the motion is to be determined" (File T-745-99, RBA at Tab 22).

[46] Mr. Wilson then sought reconsideration of Prothonotary Milczynski's direction, and on February 7, 2017, Justice Gleeson of this Court issued a direction that Mr. Wilson's materials not be accepted for filing (File T-745-99, RBA at Tab 23).

[47] On March 8, 2017, Justice Mosley granted CRA's motion for an order pursuant to Rule 150 of the *Rules* that the $3,000 paid into Court by Mr. Wilson as security for costs in the 1999 Action, be paid out of Court to CRA (File T-745-99, RBA at Tab 24). Specifically, Justice Mosley wrote at pages 2 and 3 of his order:

> **AND UPON** being satisfied that the Plaintiff Paid $3000.00 into Court as security for the Defendants' costs in this action, that the action was dismissed with costs in favour of the Defendants in 2003, that the Defendants were awarded costs in other motions in addition to this action which were to be assessed and that the assessment of these costs Orders was completed on September 28, 2016;
>
> **AND UPON** considering that the Defendants have been awarded costs against the Plaintiff totaling $41,262.78 and being satisfied that the Plaintiff has not paid any of the outstanding costs in Court file T-745-99;
>
> …
>
> 2. No costs are awarded on this motion, however the balance of the costs awarded against the plaintiff remain outstanding and payable to the Defendants.

[48] Mr. Wilson now, once again, seeks to have Officer Preston's assessment reviewed by this Court. He was required by Rule 414 of the *Rules* to serve and file his notice of motion within ten days of the assessment. Because Mr. Wilson failed to do so, he requires an order under Rule 8(1) extending the period within which to file his motion materials.

[49] In seeking a discretionary grant of an extension of time, and pursuant to the test set out in *Canada (AG) v Hennelly* (1999), 244 NR 399 (FCA) [*Hennelly*] and affirmed in *Marshall v*

Canada, 2002 FCA 172 at para 1, Mr. Wilson must demonstrate that the following criteria are satisfied:

a) a continuing intention to pursue his application;

b) that the application has some merit;

c) that no prejudice to the respondent arises from the delay; and

d) that a reasonable explanation for the delay exists.

[50] The FCA has also held that the interests of justice can override an applicant's failure to meet the above-noted test (*Canada (Minister of Human Resources Development) v Hogervorst*, 2007 FCA 41 at para 33; see also *Canada (Attorney General) v Larkman*, 2012 FCA 204 at para 62 [*Larkman*]).

[51] Having reviewed the written evidence presented to the Court and listened to Mr. Wilson's oral submissions, I find that he does not meet the *Hennelly* test and that the overriding interests of justice between the parties do not favour him. Indeed, as discussed, Mr. Wilson has already attempted to challenge Officer Preston's assessment. His motions were dismissed, first by Prothonotary Milczynski, and then by Justice Gleeson. While Mr. Wilson has shown, at best, a continuing intention to pursue his motion, there is no evidence that it has merit. There is no explanation as to why the same challenge is again being launched, nearly a year after Officer Preston's assessment. I am satisfied that CRA would be prejudiced if Mr. Wilson were permitted to proceed after such a delay.

[52] During oral submissions, Mr. Wilson also mentioned Justice Mosley's order, which assigned the $3,000 security for costs paid at the time of the 1999 Action that had lain dormant

in the Court in the years since, to offset the costs that Officer Preston assessed against him, and which were not being paid to CRA.

[53] To the extent that Mr. Wilson is now also seeking leave to challenge Justice Mosley's order, I see no merit in that proceeding for all the reasons Justice Mosley sets out in his order. Furthermore, Mr. Wilson has provided no explanation as to why he has waited almost six months to seek leave to challenge Justice Mosley's order, if it is indeed being challenged.

[54] Whichever aspect of either costs decision is being disputed (i.e. whether that of Officer Preston or Justice Mosley), Mr. Wilson has offered no justification for the lateness of this application. As the FCA observes in paragraph 87 of *Larkman*, in considering the interests of justice, finality and certainty must form part of the Court's assessment.

B. *Relitigation of the 1999 Action*

[55] Mr. Wilson also seeks leave to pursue the 1999 Action by way of "counterclaim". In light of the obvious procedural issues with this request—i.e., Mr. Wilson was himself the plaintiff to the 1999 Action, for which the pleadings have long since closed—I take Mr. Wilson's request to mean that he wishes to revive his longstanding complaint against CRA, however that might be accomplished.

[56] This Court has been clear that it is not open to Mr. Wilson to continue to challenge the dismissal of the 1999 Action or relitigate issues relating to the Seizure. At paragraph 22 of *Wilson* 2006, Justice Barnes upheld Prothonotary Milczynski's dismissal of the 2005 Action as

an attempt by Mr. Wilson to "relitigate matters which were finally determined upon the dismissal of his 1999 action". I make reference also to three further orders of this Court, all pointing back to this aspect of Justice Barnes' order in *Wilson* 2006.

[57] First, Justice Bédard held in *Wilson* 2013 at page 7 that:

> Justice Barnes' order cannot be disturbed as it is final and binding. The applicant has exhausted all avenues to challenge Justice Barnes' order.

[58] In Mr. Wilson's subsequent motion for an extension of time to seek Justice Bédard's reconsideration of *Wilson* 2013, Justice Harrington ordered that:

> … any and all proceedings purported to be filed by Mr. Wilson subsequent to the said order of Mr. Justice Barnes be returned to him, and otherwise be not acted upon, save and except a Notice of Motion for Review of Assessment of Costs Awarded in court dockets T-1677-79, T-3488-82, T-2518-89, T-2521-89 and T-2522-89.
>
> The only proceedings which may be accepted for filing is a motion, in proper form, for rescission of the Order of Mr. Justice Barnes, or for leave to institute or continue a proceeding, as set out in section 40 of the *Federal Courts Act*.
>
> (Direction of Harrington J. in File 12-T-81, dated April 4, 2013, RBA at Tab 14)

[59] Finally, in Mr. Wilson's failed attempt to appeal *Wilson* 2013 to the FCA, Justice Gauthier wrote as part of her Direction:

> It is worth mentioning that in the future, even if Mr. Wilson is granted leave to commence new proceedings in the Federal Court, it will not be open to Mr. Wilson to challenge any final decision including particularly that of Barnes J. referred to above.

(Direction of Gauthier J.A., dated February 21, 2013, RBA at Tab 12)

[60] Mr. Wilson has no reasonable grounds for today's request—his most recent in a long line of procedures to attempt to revive the issues disposed of by the dismissal of the 1999 Action.

[61] In short, Mr. Wilson has not demonstrated that he meets the requirements for an order granting him leave to commence or continue a proceeding under s. 40(3) of the *Act* under any of the arguments raised in his written and oral submissions.

IV. Relief Sought by CRA

[62] CRA sought the following relief in its Written Representations:

a) An Order directing that the within motion/application be dismissed;

b) An Order prohibiting Mr. Wilson from commencing any application under s. 40(3) of the Federal Courts Act until such time as he has:

i) paid in full all outstanding costs awards in any and all existing and prior proceedings; or

ii) obtained an order from the Federal Court giving him permission to bring an application under s. 40(3) of the Federal Courts Act for rescission or leave to proceed;

c) Costs of this motion/application; and

d) Such further and other relief as counsel may request and this Honourable Court may permit.

A. *Analysis of CRA's Request for Relief*

[63] Earlier this year, Justice Stratas of the FCA observed in *Canada v. Olumide*, 2017 FCA 42 [*Olumide* 2017] at paragraph 16, that s. 40 is similar to the vexatious litigant provisions found in statutes governing courts in other jurisdictions.

[64] In considering CRA's requested relief, which requires me to construct and interpret the *Act*, I indeed find it useful to look at remedies that have been ordered elsewhere. As Mr. Wilson was also found to be a vexatious litigant by the Ontario Superior Court of Justice, it makes sense to look at Ontario's *Courts of Justice Act*, which contains a very similar provision to s. 40 of the *Act*, as follows:

Vexatious proceedings	Poursuites vexatoires
140 (1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,	140 (1) Si un juge de la Cour supérieure de justice est convaincu, sur requête, qu'une personne, de façon persistante et sans motif raisonnable:
(a) instituted vexatious proceedings in any court; or	a) soit a introduit des instances vexatoires devant un tribunal;
(b) conducted a proceeding in any court in a vexatious manner,	b) soit a agi d'une manière vexatoire au cours d'une instance devant un tribunal,
the judge may order that,	il peut lui interdire, sauf avec l'autorisation d'un juge de la Cour supérieure de justice:
(c) no further proceeding be instituted by the	c) d'introduire d'autres instances devant un tribunal;
(d) a proceeding previously instituted by the person in	d) de poursuivre devant un tribunal une instance déjà

any court not be continued, except by leave of a judge of the Superior Court of Justice.	introduite.
R.S.O. 1990, c. C.43, s. 140 (1); 1996, c. 25, s. 9 (17).	L.R.O. 1990, chap. C.43, par. 140 (1); 1996, chap. 25, par. 9 (17).

[65] Ontario Courts have made orders prohibiting a vexatious litigant from commencing an application for rescission or leave to proceed until the applicant has met certain conditions, including paying all outstanding costs orders or obtaining an order allowing the applicant to apply for rescission or leave to proceed (see *Deep v Canada Revenue Agency (Canada Customs and Revenue Agency)*, 2011 ONSC 5660 [*Deep*] at paras 19-21; *Chavali v Law Society of Upper Canada*, 2006 CarswellOnt 3122 (ON SC) [*Chavali*]).

[66] There is no outstanding action or appeal in this Court to which Mr. Wilson is a party, for which there are live or extant issues. Furthermore, with respect to his compliance with Court directions, and as noted in Justice Mosley's March 8, 2017 order—the most recent decision of this Court relating to Mr. Wilson—he has not complied with past costs orders.

[67] Furthermore, the same or similar issues raised today have been the subject of numerous proceedings in this Court, the Ontario Superior Court of Justice, the Tax Court of Canada, as well as in appeals to the ONCA, FCA, and SCC. I find there is nothing in Mr. Wilson's application record to demonstrate any reasonable grounds justifying an order to commence or continue a proceeding under s. 40(3) of the *Act*.

[68] As CRA points out in its Written Submissions, the Ontario Superior Court of Justice directed over a decade ago that Mr. Wilson's future proceedings be "carefully scrutinized" at the outset:

> …[Mr. Wilson's] refusal to accept prior court rulings in other cases, his insistence on re-litigating already decided issues; and his willful blindness to the truth – all combine to make him a true nuisance to the court.
>
> …
>
> Any further or existing court proceedings in which Mr. Wilson is involved should be carefully scrutinized before they are allowed to proceed.
>
> (Reasons for Judgment of Little J., Ontario Superior Court File 59238-OT dated July 18, 2007, at paras 6 and 79, RBA at Tab 9)

[69] I am guided also by the FCA's comments in *Olumide* 2017, which describe the strain that vexatious litigants place on courts' finite resources:

> [17] Section 40 reflects the fact that the Federal Courts are community property that exists to serve everyone, not a private resource that can commandeered in damaging ways to advance the interests of one.
>
> [18] As community property, courts allow unrestricted access by default: anyone with standing can start a proceeding. But those who misuse unrestricted access in a damaging way must be restrained. In this way, courts are no different from other community properties like public parks, libraries, community halls and museums.
>
> [19] The Federal Courts have finite resources that cannot be squandered. Every moment devoted to a vexatious litigant is a moment unavailable to a deserving litigant. The unrestricted access to courts by those whose access should be restricted affects the access of others who need and deserve it. Inaction on the former damages the latter.

> [20] This isn't just a zero-sum game where a single vexatious litigant injures a single innocent litigant. A single vexatious litigant gobbles up scarce judicial and registry resources, injuring tens or more innocent litigants. The injury shows itself in many ways: to name a few, a reduced ability on the part of the registry to assist well-intentioned but needy self-represented litigants, a reduced ability of the court to manage proceedings needing management, and delays for all litigants in getting hearings, directions, orders, judgments and reasons.

[70] The FCA further wrote at paragraph 27 of *Olumide* 2017 that orders made under s. 40 of the *Act* do not bar access to the courts, but rather serve to regulate such access. I find that Mr. Wilson's conduct justifies tighter regulation than has been the case up until now, even with the s. 40 vexatious litigant declaration, and am thus satisfied that in light of Mr. Wilson's continued attempts to challenge a wide range of final decisions in the decade since Justice Barnes' s. 40 order, he should be subject to the additional constraints requested by CRA, which have been ordered by Ontario courts in *Deep* and *Chavali*.

[71] In terms of the scope of that tighter regulation, I agree with CRA that Mr. Wilson should be required to file a preliminary motion with limits on the materials filed, as has been imposed by the Ontario courts in *Deep* and *Chavali*. This is an appropriate control mechanism that still permits Mr. Wilson access to the courts—a hallmark of the rationale underlying s. 40 (*Olumide* 2017 at para 27).

[72] Going forward, before Mr. Wilson may apply under s. 40(3), he must first make a preliminary motion to this Court in writing, accompanied by an affidavit not exceeding five pages in length outlining the merits of his proposed proceeding or step in a proceeding, along with a copy of this Judgment and Reasons. (Recall that Mr. Wilson is prohibited by Justice

Barnes' vexatious litigant order, from commencing or continuing any proceeding before this Court without obtaining leave under s. 40(3) of the *Act*—whether by way of application, action, motion, or any other proceeding.)

[73] Mr. Wilson's preliminary motion materials must be in accordance with the formatting requirements of the Rules (and particularly Rules 65-70). If those materials are not in compliance, or if they exceed the five-page limit imposed by my order, they will not be accepted for filing. If this Court is satisfied on the preliminary motion that Mr. Wilson's proposed proceeding or step in a proceeding has merit, he will be directed to serve and file a full application under s. 40(3) of the *Act*.

[74] This added preliminary step of requiring concise materials to first seek the Court's permission for leave under s. 40(3) will, in my view, assist the concerned parties. First, the length requirement will focus Mr. Wilson in any future request made. Second, it will assist the Respondent in addressing the narrow issue of whether Mr. Wilson has raised any new matters, or is once again attempting to challenge finally decided matters.

[75] More focus has become necessary because, as is clear from the materials filed for this application, Mr. Wilson continues to bring repetitive proceedings before this Court, revisiting issues that have been previously decided, attempting to revive matters for which final orders have been issued, and appealing matters already exhausted. In doing so, materials can be voluminous and unclear, as has been observed in these Reasons. What results is the inevitable and unfortunate reality observed in *Olumide* 2017: a strain on the Court system to the detriment

of other deserving users. On a tightly-framed preliminary motion, the Court can efficiently determine whether Mr. Wilson's rationale for seeking leave under s. 40(3) appears to have merit, or whether he is merely attempting to reopen settled matters.

[76] Finally, I note that in oral submissions to the Court, CRA also requested that Mr. Wilson be required to obtain this Court's leave to apply under s. 40(3) on an *ex parte* basis, as ordered by Justice Nordheimer in *Chavali*. While that may be an approach considered by this Court in the future, CRA is receiving all relief sought in its Written Representations, which I feel is sufficient at this time. This relief includes costs in the amount of $500, payable forthwith by Mr. Wilson to CRA.

V. Conclusion

[77] Mr. Wilson's application is dismissed as he has not met the requirements of s. 40(4) of the *Act*. Given Mr. Wilson's continued attempts to relitigate the same issues that he has since the 1999 Action, Mr. Wilson may not commence any further applications under s. 40(3) of the *Act* until he has paid all outstanding costs awards in all prior proceedings or obtained an order from this Court giving him permission to bring an application under s. 40(3) in accordance with the procedure set out in these Reasons.

JUDGMENT in T-758-17

THIS COURT ORDERS that:

1. The within application be dismissed;

2. Mr. Wilson is prohibited from commencing any application under s. 40(3) of the Federal Courts Act until such time as he has:

    i. Paid in full all outstanding costs awards in all existing and prior proceedings; or

    ii. Obtained an order from the Federal Court giving him permission to bring an application under s. 40(3) of the *Federal Courts Act* for rescission or leave to proceed, which order shall be obtained through a preliminary motion in writing accompanied by an affidavit not exceeding five pages in length, outlining the merits of Mr. Wilson's proposed proceeding or step in a proceeding, along with a copy of this Judgment and Reasons. Mr. Wilson's motion materials must be in accordance with the formatting requirements of the *Rules*. If they are not, or if they exceed the length limit imposed by these Reasons, they will not be accepted for filing. If the Court is satisfied that the proposed proceeding or step in a proceeding has merit, it will direct Mr. Wilson to serve and file a full application under s. 40(3) of the *Federal Courts Act*; and

3. Costs for this application in the amount of $500 be paid forthwith by Mr. Wilson to CRA.

"Alan S. Diner"

Judge

FEDERAL COURT

SOLICITORS OF RECORD

DOCKET:	T-758-17
STYLE OF CAUSE:	GRANT R WILSON V CANADA REVENUE AGENCY
PLACE OF HEARING:	TORONTO, ONTARIO
DATE OF HEARING:	JULY 18, 2017
JUDGMENT AND REASONS:	DINER J.
DATED:	SEPTEMBER 11, 2017

APPEARANCES:

Grant R. Wilson	THE APPLICANT ON HIS OWN BEHALF
Maria Vujnovic	FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada Toronto, Ontario	FOR THE RESPONDENT