

Federal Court



Cour fédérale

Date: 20230210

Docket: T-2396-22

Citation: 2023 FC 161

Ottawa, Ontario, February 10, 2023

PRESENT: Madam Justice McDonald

BETWEEN:

HIS MAJESTY THE KING

Applicant

and

IRA ZBARSKY

Respondent

AMENDED JUDGMENT AND REASONS

[1] His Majesty the King in Right of Canada [Canada] brings this Application under subsection 40(1) of the *Federal Courts Act*, RSC 1985, c F-7 for an Order declaring Ira Zbarsky, also known as Ira Zbarky, a vexatious litigant. Canada asks that Mr. Zbarsky be prohibited from filing proceedings of any kind before this Court without first obtaining leave from this Court.

[2] As required by subsection 40(2) of the *Federal Courts Act*, this Application is supported by the written consent of the Attorney General of Canada's delegate.

[3] At the hearing, while Mr. Zbarsky claimed he was not served with the Application materials, legal counsel for Canada filed proof of service confirming service on Mr. Zbarsky by email. I would also note that Mr. Zbarsky's oral submissions made during the hearing clearly indicate he had read the Application materials filed by Canada. In any event, he did not seek an adjournment and I am satisfied he was properly served with the Application materials.

[4] On January 26, 2023, the Court advised Mr. Zbarsky this Application would be heard by videoconference on January 31, 2023. He was given until January 30, 2023, to file responding materials. He did not file any responding materials by January 30, 2023.

[5] On the morning of the hearing on January 31, 2023, Mr. Zbarsky came to the Federal Court Registry in Vancouver and requested the hearing proceed in person, as he could not access Zoom. The Court permitted Mr. Zbarsky to attend the hearing via telephone.

[6] On January 31, 2023, in addition to requesting an in-person hearing, Mr. Zbarsky also filed two handwritten letters with the Court indicating he wished to challenge the constitutionality of Rule 221 of *Federal Courts Rules*, SOR/98-106. I note that the issue on this Application is section 40 of the *Federal Courts Act*, not Rule 221.

[7] Although he did not file written submissions, the Court allowed Mr. Zbarsky to make oral submissions. During his submissions, he re-argued the various matters that have been struck by the Court, namely his issues with the COVID-19 travel restrictions and vaccine mandate, and the

cancellation of Greyhound bus services in British Columbia. These matters are referenced in more detail below.

[8] It became clear during his oral submissions, that despite the numerous filings he has made in the Federal Court, Mr. Zbarsky fundamentally does not understand or respect the Court processes. He openly admits he will not abide by any of the *Federal Courts Rules* or judgments of the Court with which he disagrees. He also declared he would not pay any cost awards made against him until a final decision has been made on matters that have already been dismissed by the Court. He claims to have been denied due process.

[9] For the more detailed reasons that follow, Mr. Zbarsky is declared a vexatious litigant.

I. Mr. Zbarsky's Litigation Background

[10] Mr. Zbarsky has a long litigation history. According to the affidavit evidence submitted by Canada, Mr. Zbarsky has instituted at least 48 court proceedings since 1990. This includes eight claims and applications in this Court, 37 claims in British Columbia Superior Court, and three appeals in the Federal Court of Appeal [FCA].

[11] Mr. Zbarsky's proceedings have been dismissed for failing to disclose reasonable causes of action, for failing to comply with the Directions of the Court, as attempts to re-litigate matters previously decided, due to the lack of jurisdiction of the Court, or as otherwise frivolous and vexatious and abuses of process.

[12] Mr. Zbarsky's recent proceedings before this Court and the FCA include:

- T-673-16 FC – Zbarsky v Her Majesty the Queen, Action: Mr. Zbarsky was directed to submit a status report and proposed timetable for completion. Mr. Zbarsky claimed he could not return to Canada from overseas to resolve the case. The action was stayed pending further order of the Court on October 12, 2017 and eventually discontinued.
- A-451-16 FCA – Zbarsky et al v Canada Revenue Agency Charities Directorate, Appeal: The appeal was dismissed on August 1, 2017, for Mr. Zbarsky's failure to comply with a Notice of Status Review issued on June 21, 2017.
- T-410-19 FC – Zbarsky v BC Ministry of Attorney General et al, Simplified Action filed March 5, 2019: Mr. Zbarsky claimed the cancellation of Greyhound buses and railway violated sections 2(a) and 15 of the *Canadian Charter of Rights and Freedoms*, Part I of the *Constitution Act, 1982*, Schedule B to the *Canada Act 1982 (UK), 1982, c 11 [Charter]*. British Columbia brought a motion to strike the action. Mr. Zbarsky filed a Statement of Response after the deadline to file a responding motion had expired. The Court accepted the document for filing despite the fact it was filed late and notwithstanding the irregularities in the document. The action was struck without leave to amend on May 14, 2019, as there was a lack of jurisdiction, bald assertions, no material facts were pled so there was no reasonable cause of action disclosed, and the action was vexatious. The Province was awarded \$500.00 in costs.

- T-1693-19 FC – Zbarsky v Elections Canada, Simplified Action filed October 16, 2019: The action was struck without leave to amend on the basis no material facts were pled so no reasonable cause of action was established, the relief sought could not be granted, and the action was vexatious.

- T-1800-19 FC– Zbarsky v Transport Canada, Simplified Action filed November 4, 2019: Mr. Zbarsky claimed the cancellation of Greyhound buses and railway was negligent and violated sections 6 & 7 of the *Charter*. The action was struck without leave to amend on January 2, 2020, as the action contained bald allegations, no material facts were pled so no reasonable cause of action was established, and the action was vexatious. The Court noted that given recent prior litigation, Mr. Zbarsky should be aware of basic legal principles governing pleadings. Costs of \$450.00 were awarded and are unpaid.
 - Mr. Zbarsky’s motion to set aside the Prothonotary’s decision was dismissed. Mr. Zbarsky failed to file motion record further to the Court’s direction, presented limited argument and no authorities at hearing, and failed to state a reasonable cause of action or identify an error. The Court awarded \$750.00 in costs, which remain unpaid.

- T-1485-21 FC - Zbarsky v Her Majesty the Queen, Simplified Action, filed September 27, 2021: Mr. Zbarsky claimed unidentified Transport Canada COVID-19 travel policies and Executive Order(s) violated section 15 of the *Charter*. Canada brought a motion to strike the application. Mr. Zbarsky sought a blanket extension of time to file a response. He filed his responding motion

materials one day late and included affidavit evidence contrary to the *Federal Courts Rules*. The action was struck without leave to amend on the basis the claim contained bald allegations, no material facts were pled so no reasonable cause of action was established, and the claim was vexatious. The Court awarded \$450.00 in costs, which remain unpaid.

- Mr. Zbarsky attempted to appeal this decision on December 18, 2021. The FCA provided directions and an extended deadline to comply. Mr. Zbarsky did not comply with the directions and did not perfect the appeal.

- T-1644-21 FC - Zbarsky v Her Majesty the Queen, Statement of Claim filed October 28, 2021: Mr. Zbarsky claimed that unidentified Transport Canada COVID-19 travel policies and Executive Order(s) violated sections 1, 2, 6, and 7 of the *Charter*. In October 29, 2021, Mr. Zbarsky filed a motion seeking interlocutory relief. Canada filed a motion to strike and for security for costs. Mr. Zbarsky filed his responding motion record, which had not been served on Canada. Canada objected and the Court issued directions instructing Mr. Zbarsky on how to rectify his deficiencies. The action was struck without leave to amend, as the claim contained bald allegations, no material facts were pled so no reasonable cause of action was established, and the claim was vexatious. The Court noted recent prior litigation with same findings and outcome including T-410-19, T-1693-19, T-1800-19, T-1485-21. The Court awarded \$450.00 in costs, which remain unpaid.

- 22-A-15 FCA - Zbarsky v Her Majesty the Queen, motion for an extension of time to appeal filed August 26, 2022: The FCA dismissed Mr. Zbarsky's application for extension of time.

II. Issues

[13] This Application raises the following issues:

- A. Should Mr. Zbarsky be declared a vexatious litigant?
- B. If so, what restrictions are appropriate?

III. Analysis

[14] Subsection 40(1) of the *Federal Courts Act* provides:

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.	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.
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[15] Section 40 incorporates “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” (*Canada v Olumide*, 2017 FCA 42 at para 17 [*Olumide*]).

Section 40 also:

reflects Parliament’s recognition that such behaviour can impose inordinate costs and other burdens on other parties to proceedings, as well as on the Court itself. To the extent that such behaviour typically requires a much greater allocation of scarce judicial and registry resources than would otherwise be required, it diverts those resources away from other meritorious proceedings²²

(*Birkich v Monashee Land Surveying and Geomatics Ltd*, 2021 FC 1278 at para 18).

[16] In other words, the conduct of vexatious litigants limits access to justice for other litigants.

[17] The legal test applicable to vexatious litigant declarations is straightforward: “where continued unrestricted access of a litigant to the courts undermines the purposes of section 40, relief should be granted” (*Simon v Canada (Attorney General)*, 2019 FCA 28 at para 19; *Olumide* at para 31).

[18] An analysis into whether the Court should use section 40 will turn on the specific factual circumstances. No single factor is determinative, although the Court recently summarized the following indicia of vexatiousness in *Canada (Attorney General) v Simon*, 2022 FC 1135 at paragraph 27:

- being admonished by other courts for engaging in vexatious and abusive behaviour;

- instituting frivolous, unnecessary or inappropriate proceedings (including motions, applications, actions or appeals);
- making scandalous or unsupported allegations against opposing parties;
- re-litigating settled issues;
- unsuccessfully appealing decisions as a matter of course; and
- ignoring rules, court orders and/or cost awards.

[19] A declaration under section 40 does not bar a litigant's access to the Court; it only regulates the access, requiring leave of the Court to file or continue a proceeding (*Olumide* at para 27).

A. *Should Mr. Zbarsky be Declared a Vexatious Litigant?*

[20] The courts have dismissed virtually all of the proceedings brought by Mr. Zbarsky. Common reasons for dismissal are that the claims failed to disclose reasonable causes of action, were scandalous, frivolous, vexatious or abuses of process, or because he failed to comply with the *Federal Courts Rules* and directions of the Court. For example, in *Zbarsky v Canada*, 2022 FC 195, the Court noted recent prior litigation with same findings and outcome, including T-410-19, T-1693-19, T-1800-19, T-1485-21, as above (at paras 40-42).

[21] Mr. Zbarsky has also attempted to re-litigate matters. Two examples are files T-410-19 and T-1800-19, which challenged whether the cancellation of Greyhound buses breached

Charter rights, and T-1485-21 and T-1644-21, which challenged whether COVID-19 vaccine mandates breached the *Charter*.

[22] Mr. Zbarsky has continually failed to comply with court orders. Several of his actions and applications have been dismissed due to his non-compliance with an order of this Court.

[23] Mr. Zbarsky also continually fails to comply with the *Federal Courts Rules*, a behaviour that continued in this Application. He did not comply with the either deadlines or filing procedures in his attempts to file a statement of defence, a notice of appearance, or responding materials for this Application.

[24] Additionally, Mr. Zbarsky has numerous costs orders outstanding against him. According to the materials filed in this Application, Mr. Zbarsky has at least four outstanding costs awards he has not paid. Further, he stated at the hearing of this Application that he does not intend to pay the costs awards until his dismissed claims have been heard by the Court and decided.

[25] Mr. Zbarsky has also made scandalous statements against opposing parties. For example, in an email to legal counsel for Canada, Mr. Zbarsky stated the COVID-19 vaccine mandate was akin to “naziism”.

[26] In my view, Mr. Zbarsky’s conduct is vexatious. His conduct is both ungovernable and harmful, and requires the imposition of restrictions on his conduct before this Court.

B. *What restrictions are appropriate?*

[27] Canada has requested that Mr. Zbarsky be required to obtain leave of the Court to institute proceedings or before the Court Registry will accept any documents from Mr. Zbarsky for filing.

[28] As the FCA stated in *Canada (Attorney General) v Fabrikant*, 2019 FCA 198 [*Fabrikant*] at paragraph 2, this Court has plenary jurisdiction to impose additional requirements on vexatious litigants as may be necessary to prevent abuses of process. A vexatious litigant order should try to do the following:

- Bar vexatious litigants from litigating themselves, litigating through proxies, and assisting others with their litigation.
- Rule on the issue whether the vexatious litigant's pending cases should be discontinued; if so, describe the manner in which they may be resurrected and continued.
- Prevent the Registry from spending time on unnecessary communications and worthless filings.
- Permit access to the Court by leave, and only in the narrow circumstances permitted by law where access is necessary and the respondent has respected the procedural rules and previous court orders; in such cases, ensure that interested persons have the opportunity to make submissions.

- Empower the Registry to take quick and administratively simple steps to protect itself, the Court and other litigants from vexatious behavior.
- Preserve the Court's powers to act further, when necessary, to adjust the vexatious litigant order, but only in accordance with procedural fairness.
- Ensure that other judgments, orders and directions, to the extent not inconsistent with the vexatious litigant order, remain in effect and can be enforced.

(*Fabrikant* at para 45).

[29] I am satisfied that it is appropriate to impose these restrictions on Mr. Zbarsky. I also find it appropriate to order that Mr. Zbarsky be prohibited from seeking leave to commence any new proceedings until all the outstanding costs awards are paid in full. I note that a similar requirement was imposed by Chief Justice Noël of the FCA in *Potvin v Rooke*, 2019 FCA 285 at paragraph 8 and by Justice Fothergill in *Canada (Attorney General) v Turmel*, 2022 FC 1526 at paragraph 51.

[30] In conclusion, Mr. Zbarsky has instituted numerous meritless and repetitive proceedings before this Court and the FCA, as well as the British Columbia courts. He has consistently refused to follow the *Federal Courts Rules* and directions from the Court. He has also brought proceedings with no reasonable cause of action, sought to re-litigate matters decided previously, made scandalous allegations against counsel and Canada, and failed to pay numerous costs orders.

[31] He must pay all outstanding costs awards ordered by this Court and obtain leave before instituting or continuing any litigation in this Court.

AMENDED JUDGMENT IN T-2396-22

THIS COURT'S JUDGMENT is that:

1. Ira Zbarsky, also known as Ira Zbarky, is declared to be a vexatious litigant pursuant to section 40 of the *Federal Courts Act*;
2. Mr. Zbarsky may not commence any proceedings in this Court without first obtaining leave to do so;
3. Any proceedings now before the Court are stayed and may not be continued without leave of this Court;
4. Any application by Mr. Zbarsky for leave to institute or continue a proceeding must, in addition to satisfying the criteria in subsection 40(4) of the *Federal Courts Act*, demonstrate that all outstanding costs awards against Mr. Zbarsky in this Court have been paid in full; and
5. The Applicant Respondent is entitled to costs in the all inclusive sum as requested of \$1,500.00 payable forthwith by Ira Zbarsky to the Attorney General of Canada.

"Ann Marie McDonald"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-2396-22

STYLE OF CAUSE: HIS MAJESTY THE KING v ZBARSKY

PLACE OF HEARING: HELD BY VIDEOCONFERENCE

DATE OF HEARING: JANUARY 31, 2023

AMENDED JUDGMENT AND REASONS: MCDONALD J.

DATED: FEBRUARY 10, 2023

APPEARANCES:

Olivia French FOR THE APPLICANT

Ira Zbarsky FOR THE RESPONDENT
(On His Own Behalf)

SOLICITORS OF RECORD:

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