CITATION: Hainsworth v. Attorney General of Canada, 2011 ONSC 2642
COURT FILE NO: CV-10-413855 & CV-10-397152
DATE: 20110530

ONTARIO
SUPERIOR COURT OF JUSTICE

B E T W E E N:	)	
	)	
ROSS HAINSWORTH	)	In Person
	)	
Applicant	)	
	)	
- and -	)	
	)	
	)	
THE ATTORNEY GENERAL OF CANADA	)	*Abigail Browne*,
	)	for the Attorney General of Canada
Respondent	)	*Sybila Valdirieso*,
	)	for the Law Society of Upper Canada
	)	*Christopher Dearden*,
	)	for CTV Globemedia
	)	*Darrell Kloeze*,
	)	for the Attorney General of Ontario
	)	*David Delagran*,
	)	for Beard Winter LLP
	)	*Ken Stuebing*,
	)	for Ontario Press Council
	)	
	)	
	)	
	)	**HEARD**: April 26, 2011

LEDERMAN J.:

Nature of Applications

[1] Pursuant to the Order of Cameron J. dated June 24, 2004 the applicant was declared a vexatious litigant and prohibited from instituting any new proceedings or continuing any previous instituted proceedings except with leave of the Court.

[2] The applicant has brought two applications seeking leave under s.140(3) of the *Courts of Justice Act* to institute several proceedings, namely:

a) An action against the Canadian Broadcasting Corporation ("CBC") and the federal Crown claiming damages for conspiracy to obstruct justice in the criminal case against former Ontario Attorney General Michael Bryant ("the Bryant case").

b) An action against RCMP Commissioner William Elliott claiming damages for malfeasance and/or negligence in the execution of his duties as the Commissioner of the RCMP by failing to inform the federal Minister of Justice that the applicant had information relevant to the Bryant case.

c) An action against CTVglobemedia Inc. and the provincial Crown claiming damages for conspiracy to obstruct justice in the Bryant case.

d) An application against the Law Society of Upper Canada ("LSUC") to compel it to take disciplinary action against Mr. Bryant, and against Murray Segal, Deputy Attorney General of Ontario, Richard C.C. Peck, Q.C., Mark Sandler and Arthur L. Hamilton, for suppressing the evidence of the applicant in the Bryant case.

e) An action in this court against Beard Winter LLP and the provincial Crown for a civil conspiracy to subvert the Ontario Employment Standards Act.

f) An application against the Ontario Press Council to compel it to act on the applicant's complaint against the Toronto Star.

g) An application for judicial review of decisions by the Law Society of Upper Canada ("LSUC"), to dismiss professional misconduct complaints made by the applicant against Clayton C. Ruby, Gavin A. MacKenzie, Michael J. Bryant (the applicant's former Member of Provincial Parliament and the former Attorney General of Ontario), Craig H. Slater (Director of the Crown Law Office – Civil, in the Ministry of the Attorney General, John Henry Sims (the former Deputy Minister of Justice, Canada), Robert D. Nicholson (the Minister of Justice and Attorney General of Canada), and Jean Chretien (former Prime Minister of Canada).

[3] In addition, he had also sought leave to bring two actions in the Small Claims Court against *Marigolds and Onions Limited* and against *CBV Collection Services Ltd*., but has abandoned those portions of his leave application.

Nature of the Applicant's Proposed Claims

[4] The applicant's complaints for the most part arise out of what he states to be his wrongful disbarment in 1995 and his attempts to uncover what he says has been a massive cover-up in respect of his situation.

[5] With respect to the actions he would like to bring against the CBC and RCMP commissioner William Elliott, he alleges that he wrote several letters to bring to their attention the connection between Michael Bryant, the then Attorney General of Ontario and his disbarment, and the fact that evidence was suppressed in relation to the prosecution of Mr. Bryant and the subsequent withdrawal of charges. He alleges that he did not receive a response to these letters and yet, coincidentally, within a week or so after sending these letters the RCMP Commissioner was interviewed on a CBC radio program during which neither he nor the interviewer mentioned the applicant's concerns regarding the Bryant case. The applicant alleges that it follows that there was a conspiracy on their part to obstruct justice.

[6] With respect to CTVglobemedia Inc., and the Provincial Crown he similarly alleges that he raised his concerns by way of letters to the Globe & Mail and to the President and CEO of CTV Globemedia and received no response, and he alleges that an inference can be drawn that they, too, were part of a conspiracy to obstruct justice in the criminal case against Mr. Bryant, given that the startling contents of his letters cried out for action but were simply ignored.

[7] With respect to the LSUC, he alleges that it, too, was part of the conspiracy in that it refused to take any disciplinary action against Mr. Bryant and other individuals all of whom were lawyers and did not respond to his letters of concern in respect of the suppression of evidence in the Bryant case. He also proposes to seek judicial review of the LSUC's decisions to dismiss his complaints against other named lawyers allegedly involved in covering up errors in the discipline proceedings against him leading to his wrongful disbarment.

[8] With respect to the Ontario Press Council, he seeks to bring an action against it alleging that it failed to pursue a complaint that he had made against the Toronto Star for the publication of an article that he alleges defamed him.

[9] He also seeks leave to bring an action against the Beard Winter law firm who had represented his former employer in respect of his claim for unpaid overtime wages and his complaint filed with the Ministry of Labour. The applicant alleges that he wrote letters raising concerns to the Beard Winter law firm about the dismissal of his complaint but received no response and alleges that there exists a conspiracy between Beard Winter and the Ministry of Labour to refuse to enforce the *Employment Standards Act of Ontario* and now proposes to bring an action against it.

Legal Principles

[10] Under s. 140(4)(a) of the *Courts of Justice Act*, on an application of this nature the court may grant leave only if:

a) there are reasonable grounds for the proposed proceeding; and

b) the proposed proceeding is not an abuse of process.

[11] The burden of demonstrating that the requirements are met is on the applicant.

Reasonable Grounds for the Proposed Proceedings

[12] The essence of the applicant's proposed claim against the RCMP Commissioner and the CBC is that they failed to respond to letters of concern from the applicant. However, there is no basis to suggest there was any legal obligation on their part to respond to his letters. Neither the RCMP nor the Federal Justice Minister had any jurisdiction to intervene in the Bryant case and, in the circumstances, the RCMP Commissioner cannot have owed the applicant any duty of care. Nor is there any duty on the part of the CBC to respond to every communication made to it by a member of the public. Moreover, there is no suggestion that the applicant has suffered any personal damages as a result of their failure to take up his cause.

[13] Complaints to the LSUC were in respect of lawyers but not in their capacity as such. The LSUC has a discretion to investigate complaints and to dismiss them. The applicant's complaints about the lawyers generally were in their capacity as politicians and in respect of his disbarment proceeding. This amounts to nothing more than a continuation of his complaints against the LSUC and his attack generally on what he alleges to be his wrongful disbarment.

[14] Furthermore, there are no reasonable grounds for proposed proceedings against Beard Winter. The applicant did not participate in the proceedings before the Employment Standards Officer, and took no appeal from his decision dismissing his complaint. At a later time, the applicant admitted in court that he had received an amount in satisfaction of his claim on his dismissal from employment. At its highest, the nature of the applicant's complaint against Beard Winter is that they did not respond to his letters; however, such a complaint does not give rise to a cause of action against them.

[15] The applicant had made a complaint to the Ontario Press Council back in 2001 in respect of the Toronto Star article. However, by his letter dated March 20, 2001 he advised the Ontario Press Council that he was not going to pursue the matter and it closed its file. Nine years later he requested that the Ontario Press Council pursue the matter and it declined to do so.

[16] The Ontario Press Council is a voluntary organization. It is not a creature of statute. Nor is it an adjudicative body and not subject to judicial review. The Ontario Press Council deals with ethical behaviour only, and generally does not deal with matters that could lead to litigation such as allegations of defamation and libel as the complainant can bring his or her own proceedings with respect to such matters. There is no duty of care owed to the applicant by the Ontario Press Council. Accordingly, there are no reasonable grounds for proposed proceedings against it.

Cross-Examination on Affidavits

[17] The applicant has raised certain grounds concerning cross-examination. He stated that as the respondents did not cross-examine him on his affidavits, his evidence remains unchallenged and should be accepted. He raised the same issue before Cameron J. in 2004 who aptly disposed of the matter in paragraphs 52-53 of his decision ([2004] O.J. No. 2730) stating:

> 52 Mr. Hainsworth argues that as he filed an affidavit on this application and was not cross-examined on it, I must accept what he says as true by way of drawing an adverse inference for failure to cross-examine.
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> 53 I disagree. I am obliged to consider his evidence objectively and dispassionately in accordance with common sense criteria. I may accept all, a part or none. I am similarly obliged to consider all the other evidence but I am not bound to accept any. I find the evidence of Mr. Hainsworth directed to re-argument of the merits of his discharge from the Canadian Forces, his court martial prosecution, his disbarment, lack of response from politicians, misconduct by the judge who convicted him, the judges who heard the appeal and the registrars of the Court of Appeal and Supreme Court of Canada and the lawyers who acted for the LSUC.

[18] The applicant also alleges that he was denied the opportunity by respondents' counsel to cross-examine certain affiants. However, it is clear from the exchange of correspondence between them that respondents' counsel were always prepared to make the individuals available for cross-examination so long as the applicant made the arrangements for the examination and was prepared to pay for the transcripts of the examinations. The applicant never made such arrangements, but rather brought a motion late in the day seeking the right to cross-examine the affiants; but in the end, he never did pursue the motion to a hearing.

Abuse of Process

[19] The common thread running through the applicant's proposed proceedings is his desire to take legal action against the media, the RCMP, the Federal and Provincial Crown and any lawyers involved directly or indirectly in the prosecution of Mr. Bryant. In this way, the applicant is raising again allegations of conspiracy against him and cover-up of evidence that comprised part of his earlier actions.

[20] The applicant claims that the proposed new defendants were involved in a conspiracy to obstruct justice regarding the prosecution of Mr. Bryant. The nature of the conspiracy was to avoid police and public scrutiny of Mr. Bryant's involvement in the alleged "failure of democracy" relating to the applicant's disbarment by the LSUC.

[21] In deciding whether a proceeding is vexatious, the Court may consider the following non-exhaustive list of factors that were set out in *Lang Michener v. Fabian*, [1987] O.J. No. 355 (H.C.J.) at paragraph 19, as follows:

> a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;

b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;

c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;

d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;

e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;

f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious; and

g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[22] Most if not all of the above criteria have been met in this case. Specifically:

a) The applicant cannot reasonably expect to obtain relief in the proposed proceedings.

b) The proposed proceedings are the latest in a multifarious series of attempts by the applicant to collaterally attack what he describes as his "wrongful disbarment," and to "roll forward" issues raised by the applicant during past proceedings relating to his disbarment.

c) In support of his application, the applicant has filed a great deal of evidence which collaterally attacks past judicial determinations some of which the applicant has unsuccessfully appealed. These include the applicant's criminal conviction, as well as multiple decisions dismissing the applicant's civil claims for wrongful arrest and military backpay.

d) The applicant has failed to pay more than $61,000 (including interest) in outstanding costs owed to the Respondent federal Crown, in respect of five different costs orders by this court.

e) Indeed, the applicant has expressly refused to pay the costs owing to the Respondent on several occasions. On two occasions, he has responded to requests that he pay these costs by noting that, "*Hell would have to freeze over before I paid you idiots a cent of any costs order*" [emphasis in the original]

[23] It is clear on the material filed that the applicant's request for leave is an abuse of process in respect of all the proceedings that he would like to bring.

Disposition

[24] Accordingly, the two applications for leave brought by the applicant are dismissed.

[25] Although this court issued the vexatious litigant order in 2004, the applicant has continued to engage in the very conduct that led to that order and has caused the respondents to incur further costs in responding to these leave applications.

[26] In similar circumstances, this court has held that a standard vexatious litigant order is insufficient and that further restrictions on an applicant's ability to institute proceedings are necessary to achieve the goals underlying s. 140. Nordheimer J. noted in *Chavali v. Law Society of Upper Canada*, [2006] O.J. No. 2036 (S.C.J.) at paras. 18-19 as follows:

> 18 Unfortunately, however, that narrow but necessary exception to an order under section 140 can itself be used as a vehicle for further harassing or vexatious conduct. The practical result of the section is that a person, who has been found to be vexatious litigant, can bring repeated applications for leave to proceed under section 140(3) and thereby continue to hound their chosen targets. This case attests to that reality. Notwithstanding, that the essential allegations that the Chavalis assert have been rejected on numerous occasions by both this court and the Federal Court, and our respective courts of appeal, and the Supreme Court of Canada, the Chavalis have, through the mechanism of applications for leave to institute further proceedings, been able to persist in their campaign against the moving parties. Indeed, in this very application, the Chavalis once again attempted to resurrect those same allegations.
>
> 19 It seems to me that when persons, who have already been found to be vexatious litigants, continue to demonstrate that they are not prepared to alter their conduct, further restrictions must be placed upon their right to have access to the court system. Failure to do so would have the effect of countenancing such behaviour to the prejudice of the other parties. While section 140 does not expressly contemplate such ancillary relief, I am nonetheless satisfied that the court has jurisdiction to make such an order. The jurisdiction arises out of what Lord Diplock said, in the above quotation, was the "inherent power which any court of justice must possess to prevent misuse of its procedure". I would also

note that neither counsel for the Chavalis took the position that the court lacked jurisdiction to make an order of the type sought.

[27] He supplemented the existing vexatious litigant order with a further order prohibiting any applications for leave under s.140 until such time that the applicants paid all outstanding costs awards and obtained an order from the court authorizing them to proceed with an application under s.140.

[28] Such as order is appropriate here. Accordingly, there will be an order prohibiting the applicant from commencing any further application under s.140 until such time as he:

a) has paid in full all costs awards in any existing or prior proceedings in this or any other Court;

b) obtains an Order of this Court giving him permission to bring an application under s.140. This Order shall be obtained by an *ex parte* motion in writing and shall be accompanied by a copy of this Court's decision and an affidavit of no more than 5 pages outlining the merits of the proposed proceeding. If the Court determines that the proposed application for leave has sufficient degree of merit, it may direct that the full application proceed. If the leave application does proceed, any respondent is at liberty to bring a motion for security for costs in respect of such proceeding.

[29] With respect to the costs of these applications, the parties may make written submissions within 30 days.

LEDERMAN J.

Released: May 30, 2011

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Applicant

- and -

THE ATTORNEY GENERAL OF CANADA

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JUDGMENT

LEDERMAN J.

Released: May 30, 2011