

FEDERAL COURT OF APPEAL

B E T W E E N :

JOHN TURMEL

Appellant

and

HIS MAJESTY THE QUEEN

Respondent

**MEMORANDUM OF FACT AND LAW OF THE RESPONDENT,
THE ATTORNEY GENERAL OF CANADA
(INCORRECTLY NAMED AS HER MAJESTY THE QUEEN)**

March 29, 2023

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OVERVIEW

1. By decision dated November 9, 2022, the Federal Court declared the appellant, John Turmel, a vexatious litigant pursuant to s. 40 of the *Federal Courts Act*. In doing so, the Court observed that Mr. Turmel persistently brings and recruits others to bring meritless proceedings, brings proceedings for an improper purpose, attempts to re-litigate issues, makes scandalous allegations against judges and other parties, ignores court orders and rules, and refuses to pay costs awards.

2. Mr. Turmel has established no error in these findings. He asserts that his prior proceedings had merit that the courts involved failed to see, and have ultimately assisted others even if the proceedings were dismissed. However, it was not open to the Federal Court to review the court decisions in Mr. Turmel's prior cases, and the assertion that Mr. Turmel has assisted others is not supported by evidence or authority.

3. Mr. Turmel also states that he has ignored only one court order, and denies that he has disregarded court rules or refused to pay court costs. However, the Federal Court's findings to the contrary were amply supported by the record, and Mr. Turmel has established no error in the Federal Court's analysis. This appeal should accordingly be dismissed.

PART I – STATEMENT OF FACTS

A) MR. TURMEL'S LITIGATION HISTORY

1) Proceedings instituted by Mr. Turmel

4. Since 1980, Mr. Turmel has personally instituted at least 68 court proceedings. This includes 20 claims and applications in the Federal Court, 13 appeals to this Court, 18 applications and appeals in the courts of Ontario, and 17 applications for leave to appeal to the Supreme Court of Canada.¹

¹ Judgment and Reasons of the Federal Court, dated November 9, 2022 (*Canada v John C Turmel*, [2022 FC 1526](#)), para 8 (“Application Decision”), **Appeal Book (“AB”), Vol 1, Tab B, p 22**; Affidavit of Lisa Minarovich, sworn May 31, 2022 (“Minarovich Affidavit”), para 6, **AB, Vol 1, Tab D, p 48-52**

5. These proceedings have concerned a wide range of legal issues.² In 1981, the Federal Court dismissed an application by Mr. Turmel for an order that the Bank of Canada “cease and desist the genocidal practice of interest.” This Court dismissed an appeal of this decision, and the Supreme Court of Canada dismissed an application by Mr. Turmel for leave to appeal.³

6. In 1982, the County Court of Ontario granted an action by Toronto Dominion Bank against Mr. Turmel, and awarded judgment in the amount of \$2,813.19. After an unsuccessful appeal to the Court of Appeal for Ontario, Mr. Turmel sought leave to appeal to the Supreme Court of Canada where he argued that the bank’s interest rates violated natural, biblical or criminal laws. The Court dismissed this leave application.⁴

7. Mr. Turmel is also a perennial candidate in federal and provincial elections, and has brought numerous proceedings concerning election issues. Between 1980 and 2007, he instituted twelve unsuccessful proceedings against the Canadian Radio-Television and Telecommunications Commission (“CRTC”) and various broadcasters concerning the allocation of free political broadcast time or Mr. Turmel’s omission or expulsion from debate broadcasts. Although he appealed the decisions dismissing several of these proceedings, and sought leave to appeal two of the appeal decisions to the Supreme Court of Canada, these appeals and leave applications were all dismissed or deemed abandoned.⁵

8. In 2015, Mr. Turmel brought a Federal Court claim for a declaration that the audit-expense provisions of the *Canada Elections Act* infringed his right under s. 3 of the *Canadian Charter of Rights and Freedoms* (“Charter”) to participate as a candidate

² Application Decision, para [8](#), **AB, Vol 1, Tab B, p 22**

³ Application Decision, para [11](#), **AB, Vol 1, Tab B, p 23**; Minarovich Affidavit, paras 10-13, **AB, Vol 1, Tab D, p 53-54**

⁴ Application Decision, para [12](#), **AB, Vol 1, Tab B, p 23**; Minarovich Affidavit, paras 15-18, **AB, Vol 1, Tab D, p 54**

⁵ Application Decision, paras [13-14](#), **AB, Vol 1, Tab B, p 23-24**; Minarovich Affidavit, paras 19-50, **AB, Vol 1, Tab D, p 54-57**

in federal elections. That claim, an appeal by Mr. Turmel to this Court, and an application for leave to appeal to the Supreme Court of Canada, were all dismissed.⁶

9. Mr. Turmel has also brought several proceedings concerning Canada's gaming laws. For example, in 1981, Mr. Turmel brought an unsuccessful Federal Court application for an order that the provincial Crown prosecute retailer Simpsons-Sears for selling playing cards, which Mr. Turmel alleged were prohibited gaming devices. In 1993, Mr. Turmel was personally convicted for keeping a gaming house. His appeal to the Court of Appeal for Ontario, and an application for leave to appeal to the Supreme Court of Canada, were both subsequently dismissed.⁷

10. In 2010, Mr. Turmel brought two separate libel claims against the Canadian Broadcasting Corporation ("CBC") in relation to his appearance on the *Dragon's Den* television program. The Ontario Superior Court of Justice dismissed both claims. Mr. Turmel's appeals to the Court of Appeal for Ontario, and application for leave to appeal to the Supreme Court of Canada, were similarly dismissed.⁸

11. Mr. Turmel has also brought several constitutional challenges to Canada's cannabis laws. In 2002 and 2003, he brought two separate civil applications in the Ontario Superior Court of Justice for orders declaring the marihuana provisions of the *Controlled Drugs and Substances Act* ("CDSA") unconstitutional. In 2003, Mr. Turmel was personally charged with possession for the purposes of trafficking, and in the course of his prosecution, brought three interlocutory applications again challenging the constitutionality of the CDSA marihuana provisions.⁹

⁶ Application Decision, para [15](#), **AB, Vol 1, Tab B, p 24**; Minarovich Affidavit, paras 51-54, **AB, Vol 1, Tab D, p 61-62**

⁷ Application Decision, paras [16-17](#), **AB, Vol 1, Tab B, p 24-25**; Minarovich Affidavit, paras 56-61, **AB, Vol 1, Tab D, p 62-63**

⁸ Application Decision, para [18](#), **AB, Vol 1, Tab B, p 25**; Minarovich Affidavit, paras 63-68, **AB, Vol 1, Tab D, p 62-65**

⁹ Application Decision, paras [19-21](#), **AB, Vol 1, Tab B, p 25-26**; Minarovich Affidavit, paras 73, 75-76, 78, **AB, Vol 1, Tab D, p 66-67**

12. These applications were all dismissed, and Mr. Turmel was ultimately convicted of the trafficking charge. Mr. Turmel appealed each of these decisions (a total of six appeals), and later filed a motion for an extension of time to appeal his conviction for a second time. However, the Court of Appeal for Ontario dismissed these appeals and motions, and the Supreme Court of Canada denied Mr. Turmel's leave applications and motions for extensions of time to seek leave to appeal.¹⁰

2) **The Turmel “kit” proceedings**

13. Although not licensed to practice law, Mr. Turmel frequently provides legal assistance to others. Between 2008 and 2014, the Ontario Superior Court of Justice dismissed several interlocutory applications by individuals charged with marihuana offences. The applications, which were based on court materials developed by Mr. Turmel, sought declarations that the CDSA marihuana provisions were unconstitutional.¹¹

14. Since 2014, Mr. Turmel has developed “kits” consisting of template court materials challenging the constitutionality of various aspects of Canada's medical cannabis regulatory regime, and distributed these via his websites for others to download, complete and file in the Federal Courts.¹²

15. Individuals have filed or attempted to file hundreds of substantially identical proceedings based on these kits, including:

- (a) 315 Federal Court claims, including one by Mr. Turmel, challenging the former *Marihuana Medical Access Regulations* (“MMAR”) and *Marihuana for Medical Purposes Regulations* (“MMPR”);
- (b) 19 motions to this Court for extensions of time to appeal the December 30, 2014, injunction decision of the Federal Court in *Allard v Canada*;

¹⁰ Application Decision, paras [19-21](#), **AB, Vol 1, Tab B, p 25-26**; Minarovich Affidavit, paras 74-75, 77, 79-82, 84-92, **AB, Vol 1, Tab D, p 66-68**

¹¹ Application Decision, paras [4](#), [22](#), **AB, Vol 1, Tab B, p 21, 26**; Minarovich Affidavit, paras 94-101, 301, **AB, Vol 1, Tab D, p 70-72, 139**

¹² Application Decision, paras [4](#), [25](#), **AB, Vol 1, Tab B, p 21, 27**; Minarovich Affidavit, para 9, **AB, Vol 1, Tab D, p 53**

- (c) Nine claims, including one by Mr. Turmel, for declarations that the CDSA failed to provide access to cannabis juice and oil for medical purposes;
- (d) 393 claims challenging the processing time for Health Canada registration to produce cannabis for personal medical use;
- (e) 36 claims challenging the 150-gram limit on public possession and shipping of cannabis for medical purposes;
- (f) Four claims challenging the requirement for annual healthcare practitioner authorization to use cannabis for medical purposes;
- (g) Three claims challenging, respectively, Health Canada's rejection of one plaintiff's application for registration to produce cannabis, the production-site requirements and the criminal-record requirements for individuals producing cannabis for personal medical use.¹³

16. Of these 779 proceedings, at least 657 have been struck or dismissed by the Federal Courts. The remainder were discontinued, not accepted for filing, or are the subject of outstanding requests by the Crown for dismissal.¹⁴

17. In the course of these claims, the plaintiffs have also used materials prepared by Mr. Turmel to bring more than 100 motions for interim relief, 48 appeals to this Court, and 22 applications for leave to appeal. Like the underlying proceedings, these motions, appeals and applications have all been dismissed or discontinued, with the exception of one leave application that is currently under reserve.¹⁵

¹³ Application Decision, para [28](#), **AB, Vol 1, Tab B, p 28-30**; Minarovich Affidavit, paras 103-04, 152-54, 157, 164, 166, 175, 211-12, 222-23, 225-26, 241-42, 247-48, **AB, Vol 1, Tab D, p 73, 90-91, 93, 95, 97, 107, 110-11, 116-18**

¹⁴ Application Decision, para [29](#), **AB, Vol 1, Tab B, p 30**; Minarovich Affidavit, paras 148, 158-59, 167, 191, 200, 203, 205, 213, 232, 237, 245-46, 250 and Exhibits 60 (para 40), 105, 129 (paras 4-5, 21, 57-58, 96), **AB, Vol 1 (Tab D, p 86-88, 91, 95, 102, 104-08, 113, 115, 117-18), Vol 4 (Tab D60, p 938), Vol 5 (Tab D105, p 1258-59, and Tab D129, p 1405-06, 1418, 1430, 1444)**

¹⁵ Application Decision, para [41](#), **AB, Vol 1, Tab B, p 34**; Minarovich Affidavit, paras 103-04, 108, 110, 117, 119, 121-22, 127-28, 130, 132, 157-58, 162-63, 184, 186, 191, 203, 207-10, 214, 219, 240 and Exhibit 132 (paras 11, 49-50), **AB, Vol 1**

18. Mr. Turmel has also developed and promoted template claims for declarations that Canada's COVID-19 mitigation measures are unconstitutional. Since January 2021, 80 self-represented plaintiffs, including Mr. Turmel, have filed Federal Court claims based on these templates. On July 12, 2021, the Federal Court struck Mr. Turmel's claim without leave to amend. Mr. Turmel's appeals to the Federal Court and this Court have since been dismissed. His application for leave to appeal this Court's decision to the Federal Court of Appeal is currently under reserve, and the other 79 claims remain stayed pending the outcome of this leave application.¹⁶

19. Since February 2022, eight plaintiffs, including Mr. Turmel, have also filed claims for declarations that Canada's former COVID-19 vaccination requirements for air travelers are unconstitutional. The claims, which were based on kits developed and distributed by Mr. Turmel, have all been struck without leave to amend.¹⁷

3) Mr. Turmel's proceedings have been dismissed as meritless, scandalous, frivolous and vexatious

20. As detailed above, courts have dismissed virtually all of the proceedings brought by Mr. Turmel and his kit users. While the reasons for dismissal have varied, common reasons include that the proceedings failed to disclose a reasonable cause of action, were scandalous, frivolous, vexatious or an abuse of process, or were supported by little or no evidence.¹⁸

(Tab D, p 73-75, 77-82, 91, 93, 100, 102, 105-07, 108-09, 116), Vol 5 (Tab D132, p 1474, 1486)

¹⁶ Application Decision, para [30](#), **AB, Vol 1, Tab B, p 30**; Minarovich Affidavit, paras 255-58, 260, 277, 281, **AB, Vol 1, Tab D, p 120-23, 130-32**; *Turmel v Canada, 2022 FCA 166*, paras [1](#), [3-5](#)

¹⁷ Application Decision, para [31](#), **AB, Vol 1, Tab B, p 30**; *Fudge v Canada*, CFN T-693-22 and several other proceedings (Judgment of Horne, Associate Judge, dated July 4, 2022, unreported)

¹⁸ Application Decision, paras [8-9](#), [25](#), [39-40](#), **AB, Vol 1, Tab B, p 22, 27, 33-34**; Minarovich Affidavit, paras 11, 36, 59, 71, 74, 80, 85, 95, 97, 144, 148, 158, 167, 191, 213, 232-33, 237, 277, 287, **AB, Vol 1, Tab D, p 53, 58, 63, 65-71, 84, 86-88, 91, 95, 102, 107-08, 113-15, 130-31, 134**

21. For example, in striking the constitutional challenges to the MMAR and MMPR, the Federal Court observed that the claims were largely “boilerplate” and contained virtually no detail concerning each plaintiff’s personal circumstances or how the impugned regulatory provisions engaged their individual Charter rights.¹⁹ The Federal Courts have echoed this concern in several subsequent decisions involving Mr. Turmel’s kits.²⁰

22. In pleadings and argument, Mr. Turmel has described Bank of Canada interest policies and various aspects of Canada’s medical cannabis regulatory regime as “genocidal.”²¹ He has alleged that the public possession limits for medical cannabis and federal COVID-19 measures are the result of statistical fraud, and that COVID-19 itself is an “imaginary plague,” deaths from which have been greatly exaggerated by an “evil cabal.”²² Courts have repeatedly struck these allegations as scandalous, frivolous and vexatious.²³

¹⁹ Minarovich Affidavit, paras 115, 117, 148, **AB, Vol 1, Tab D, p 76-78, 86-88**

²⁰ Application Decision, para [40](#), **AB, Vol 1, Tab B, p 33-34**; Minarovich Affidavit, paras 191, 232, 277, 287, **AB, Vol 1, Tab D, p 102, 113, 130-31, 134**; *Fudge v Canada*, CFN T-693-22 and several other proceedings (Order of Horne, Associate Judge, dated July 27, 2022, unreported), paras 11, 18 (“*Fudge* costs decision”)

²¹ Application Decision, para [11](#), **AB, Vol 1, Tab B, p 23**; Minarovich Affidavit, paras 10, 71, 74-75, 117, 233, **AB, Vol 1, Tab D, p 53, 65-67, 77-78, 114**

²² Application Decision, para [23](#), **AB, Vol 1, Tab B, p 26-27**; Minarovich Affidavit, para 233 and Exhibit 147 (Statement of Claim, paras 37, 39, 46, 71, 89-90, 104, 117, 120), **AB, Vol 1 (Tab D, p 133), Vol 6 (Tab D147, p 1577, 1579, 1581-82, 1591, 1595-96, 1600, 1605-06)**

²³ Minarovich Affidavit, paras 148, 233, 277 and Exhibit 17 (Superior Court of Justice decision dated January 9, 2003, para 81; Court of Appeal for Ontario decision dated October 7, 2003, para 6), **AB, Vol 1 (Tab D, p 86-88, 114, 130-31), Vol 2 (Tab D17, p 305, 328-29)**

23. Courts have also dismissed several of Mr. Turmel’s and his kit users’ proceedings on the grounds that they were unsupported by any evidence.²⁴ In dismissing appeals and motions for extensions of time to appeal, this Court has also frequently observed that Mr. Turmel and his kit users failed to identify any arguable error in the decision appealed from.²⁵

4) Mr. Turmel’s attempts to re-litigate issues

24. Courts in at least 17 different proceedings have observed that Mr. Turmel or his kit users attempted to raise previously decided issues.²⁶ For example, in a 1987 decision dismissing one of his many applications against the CRTC, Joyal J. noted that Mr. Turmel’s arguments had been previously rejected “in successive and unsuccessful applications before this court by the same applicant in the years 1980, 1983 and 1984.” In dismissing a parallel application against the CBC, Joyal J. also observed that Mr. Turmel “admits to having had many runs at the cat on this point.”²⁷

25. In the cannabis context, criminal courts have noted the tendency of Mr. Turmel and his kit users to bring numerous applications for interlocutory relief, and to continue doing so long after identical applications have been dismissed.²⁸ Mr. Turmel has also repeatedly and unsuccessfully sought judicial recognition of a constitutional

²⁴ Minarovich Affidavit, paras 36, 52, 59, 71, 74, 80, 117, 158, **AB, Vol 1, Tab D, p 58, 61, 63, 65-68, 77-78, 91**

²⁵ Minarovich Affidavit, paras 151, 219, 266 **AB, Vol 1, Tab D, p 89, 109, 124-25**

²⁶ Application Decision, paras [9](#), [40](#), **AB, Vol 1, Tab B, p 22, 33-34**; Minarovich Affidavit, paras 27, 30, 36, 40, 59, 65, 75, 77, 84, 86, 95, 97, 99, 101, 142, 148, 232, 287, **AB, Vol 1, Tab D, p 56-59, 64, 67-72, 84, 86-88, 113, 134**

²⁷ Minarovich Affidavit, para 40, **AB, Vol 1, Tab D, p 59**

²⁸ Minarovich Affidavit, paras 59, 84, 86, 95, 97, 99, 101, **AB, Vol 1, Tab D, p 63, 68-72**

right for healthy individuals to use cannabis for preventive medical purposes, and has continued to promote his litigation kits long after identical claims were struck.²⁹

26. In striking Mr. Turmel’s constitutional challenge to Canada’s vaccination requirements for air travelers, Associate Judge Horne observed that the claim challenged some of the same measures as Mr. Turmel’s previous challenge to federal COVID-19 mitigation measures, and contained many of “the same lengthy diatribes, and unsubstantiated allegations of cover-ups and conspiracies,” which the Court concluded was an abuse of process.³⁰

5) Mr. Turmel’s social media statements

27. In social media posts, Mr. Turmel has invited his kit users to “clog up,” “flood,” “swamp,” “semi-paralyze” or “ream out” the Federal Courts and Supreme Court of Canada registries with a “tidal wave” or “avalanche” of claims or requests for documents.³¹ In a July 2016 post promoting one of his kits, Mr. Turmel explained that “The real winning power is once again what freaked out both the Crown and the Registry last time, the volume.”³²

28. In a 2014 post, Mr. Turmel explained that he was proceeding with his challenge to the MMAR despite the repeal of those regulations in order “to smear [Health Canada] with their own dirt. These are malevolent government gremlins and I’m about to really light a fire under their asses.” In a post concerning the challenges to the cannabis possession limits, he explained that “People ask me why I keep fighting

²⁹ Minarovich Affidavit, paras 74, 80, 204, 254, **AB, Vol 1, Tab D, p 66-68, 105-06, 119-20**

³⁰ Application Decision, paras [31](#), [40](#), **AB, Vol 1, Tab B, p 30, 33-34**; Minarovich Affidavit, para 287, **AB, Vol 1, Tab D, p 134**

³¹ Application Decision, paras [4](#), [27](#), [42](#), **AB, Vol 1, Tab B, p 21, 28, 34**; Minarovich Affidavit, paras 118, 146, 160-61, 165, 173, 257, 270, 285-86, 288, **AB, Vol 1, Tab D, p 78, 85-86, 92-97, 120-22, 126-28, 133-35**; see also *Fudge* costs decision, para 19

³² Application Decision, para [27](#), **AB, Vol 1, Tab B, p 28**; Minarovich Affidavit, para 165, **AB, Vol 1, Tab D, p 94**

so many loser fights. It's because I love ruining the careers of the judges and Crowns who get added to the History Wall of MedPot shame.”³³

29. Mr. Turmel also frequently uses social media to make intemperate remarks about judges. After the Federal Court struck several of his cannabis kit claims for lack of material facts, Mr. Turmel explained that one plaintiff had cancer, but that “Judge said that's not enough. Wanted to see her X-rays, maybe give her a feel for those tumors before Doubting Thomas would believe.”³⁴ He has suggested that Supreme Court of Canada judges “deserve death row for what they have done,” and that the judges who dismissed his challenges to federal COVID-19 mitigation measures have the “blood of millions on [their] hands.”³⁵

6) Mr. Turmel has not complied with court orders, rules and timelines

30. Courts have often noted Mr. Turmel’s failure to follow court orders, rules and timelines. For example, in 2002, Mr. Turmel was convicted of contempt for knowingly posting material to the Internet in violation of a publication ban issued in the course of his brother’s trial for marihuana offences.³⁶

31. Mr. Turmel often attempts to make legal submissions on behalf of others, despite Rule 119 of the *Federal Courts Rules* and multiple reminders from the Federal Court that, as a non-solicitor, he is not permitted to do so.³⁷ He and his kit users have

³³ Application Decision, para [26](#), **AB, Vol 1, Tab B, p 27-28**; Minarovich Affidavit, paras 111, 236, **AB, Vol 1, Tab D, p 111, 114**

³⁴ Application Decision, para [33](#), **AB, Vol 1, Tab B, p 31**; Minarovich Affidavit, para 149, **AB, Vol 1, Tab D, p 88**

³⁵ Application Decision, para [32](#), **AB, Vol 1, Tab B, p 30-31**; Minarovich Affidavit, paras 131, 149, 208, 264, 275, 279, **AB, Vol 1, Tab D, p 81-82, 88-89, 106-07, 124, 130-32**

³⁶ Application Decision, paras [19](#), [43](#), **AB, Vol 1, Tab B, p 25, 34**; Minarovich Affidavit, paras 69-71, **AB, Vol 1, Tab D, p 65-66**

³⁷ Application Decision, para [44](#), **AB, Vol 1, Tab B, p 34**; Minarovich Affidavit, paras 114, 123, 145, 147-48, 202, 262, 301, **AB, Vol 1, Tab D, p 76, 80, 85-88, 105, 123-24, 139**; *Federal Courts Rules*, [SOR/98-106](#), s [119\(1\)](#) (“*Federal Courts Rules*”)

also attempted to file impermissible materials such as summary-judgment motions in stayed or simplified actions, multiple appeals from the same decision, appeals from directions, and appeals from decisions to which they were not parties.³⁸

32. Mr. Turmel and his kit users frequently miss court filing deadlines.³⁹ In 2015, Mr. Turmel personally missed a court-ordered deadline to file an appeal book agreement in a group of consolidated appeals in which he had undertaken to serve as the lead appellant. Although this Court granted him an extension of time, Ryer J.A. noted Mr. Turmel's "seeming indifference towards compliance with the order of Boivin J.A.," and awarded Canada costs despite Mr. Turmel's success on the motion.⁴⁰

33. Mr. Turmel has also failed to pay numerous costs awards. There are currently at least 12 unpaid costs awards against him (totalling \$33,793.04), and 22 outstanding costs awards (totalling \$16,362.82) against his kit users.⁴¹ In social media posts, Mr. Turmel has advised his kit users that "It's okay to skip out on costs" and encouraged those ordered to pay \$800 in costs to send a cheque for just one dollar.⁴²

³⁸ Minarovich Affidavit, paras 90, 113, 138-40, 158-59, **AB, Vol 1, Tab D, p 69-70, 76, 83-84, 91**

³⁹ Application Decision, para [43](#), **AB, Vol 1, Tab B, p 34**; Minarovich Affidavit, paras 53, 81, 108, 126, 150, 158, 181, 190, 218, 266, **AB, Vol 1, Tab D, p 61, 68, 74, 80, 89, 91, 99, 102, 109, 124-25**

⁴⁰ Minarovich Affidavit, paras 125-26, **AB, Vol 1, Tab D, p 80**

⁴¹ Application Decision, paras [25](#), [46](#), **AB, Vol 1, Tab B, p 27, 35**; Minarovich Affidavit, paras 293-96, **AB, Vol 1, Tab D, p 136-37**

⁴² Application Decision, paras [25](#), [46](#), **AB, Vol 1, Tab B, p 27, 35**; Minarovich Affidavit, paras 136, 299, **AB, Vol 1, Tab D, p 83, 138**

B) THE FEDERAL COURT DECISION UNDER REVIEW

34. In May 2022, the Attorney General of Canada (“Canada”) brought an application for an order under s. 40 of the *Federal Courts Act* declaring Mr. Turmel a vexatious litigant.⁴³

35. By decision dated November 9, 2022, the Federal Court granted Canada’s application.⁴⁴ In detailed reasons that relied on Canada’s evidence (which was uncontested by Mr. Turmel), the Application Judge, the Honourable Mr. Justice Fothergill, found Mr. Turmel exhibits several of the recognized indicia of vexatiousness. He found Mr. Turmel has personally brought, and recruited others to bring, numerous meritless proceedings in the Federal Court and other courts, and that Mr. Turmel has brought these proceedings for improper purposes. He found Mr. Turmel and his kit users have sought to re-litigate issues previously decided, and that Mr. Turmel has often made scandalous allegations against judges and other parties, ignored court orders and rules, and refused to pay costs awards.⁴⁵

36. The Application Judge considered the s. 40 jurisprudence, and noted that the ultimate test was whether a “litigant’s ungovernability or harmfulness to the court system and its participants justify a leave-granting process.”⁴⁶ The Application Judge concluded that Mr. Turmel’s conduct was “both ungovernable and harmful,” and required the imposition of restrictions on his access to the Federal Court.⁴⁷

37. In addition to the standard s. 40 leave requirement (to which he noted Mr. Turmel did not object), the Application Judge observed that the Federal Court has

⁴³ Notice of Application, issued May 10, 2022, **AB, Vol 1, Tab C, p 42-46**; *Federal Courts Act*, [RSC 1985, c F-7](#), s [40](#) (“*Federal Courts Act*”)

⁴⁴ Application Decision, paras [7](#), [55](#), **AB, Vol 1, Tab B, p 22, 38**

⁴⁵ Application Decision, paras [3-5](#), [38](#), [40](#), [42-44](#), [46](#), **AB, Vol 1, Tab B, p 21, 33-35**

⁴⁶ Application Decision, para [47](#), **AB, Vol 1, Tab B, p 35**; *Simon v Canada*, [2019 FCA 28](#), paras [15-16](#), [18-19](#)

⁴⁷ Application Decision, para [47](#), **AB, Vol 1, Tab B, p 35**

plenary jurisdiction to impose other requirements necessary to prevent abuses of its process, including vexatious litigation by proxy.⁴⁸ The Application Judge deemed it appropriate in Mr. Turmel’s case to make leave conditional on Mr. Turmel paying all outstanding Federal Court costs. He also prohibited Mr. Turmel from assisting others with their Federal Court proceedings, including by preparing or distributing Federal Court documents, and ordered that no Federal Court proceedings may be instituted by anyone using originating documents prepared by Mr. Turmel, except with leave.⁴⁹

38. However, the Application Judge declined a request by Canada to apply these measures to Federal Court of Appeal proceedings. He observed that the jurisprudence concerning whether the Federal Court could grant this relief was unsettled, and left him “in some doubt whether this Court’s jurisdiction extends to the regulation of matters before the FCA.” In the event of an appeal however, the Application Judge observed that this Court may wish to provide further guidance on this jurisdictional question.⁵⁰

PART II – POINTS IN ISSUE

39. The issues on this appeal are 1) whether the style of cause in this matter should be amended to name the Attorney General of Canada as the respondent, and 2) whether the Federal Court committed a reviewable error in declaring Mr. Turmel a vexatious litigant under s. 40 of the *Federal Courts Act*.

⁴⁸ Application Decision, paras [6](#), [49-50](#), **AB, Vol 1, Tab B, p 36-37**; *Canada v Ubah*, [2021 FC 1466](#), paras [44](#), [50-51](#), aff’d [2023 FCA 26](#) (“Ubah FCA”); *Canada v Fabrikant*, [2019 FCA 198](#), paras [2](#), [44-45](#); *Badawy v 1038482 Alberta Ltd (Intelliview Technologies Inc)*, [2019 FC 504](#), para [121](#); *Virgo v Canada*, [2019 FCA 167](#), para [33](#); *Potvin v Rooke*, [2019 FCA 285](#), para [8](#)

⁴⁹ Application Decision, paras [7](#), [48](#), [51](#), **AB, Vol 1, Tab B, p 22, 35-37**

⁵⁰ Application Decision, paras [52-54](#), **AB, Vol 1, Tab B, p 37-38**; *Lawyers’ Professional Indemnity Company v Coote*, CFN T-312 (Order of Hughes J, dated June 13, 2013, unreported), paras (b) and 1 (for reasons reported at [2013 FC 643](#)), aff’d [2014 FCA 98](#); *Coote v Canada*, [2021 FCA 150](#), paras [3](#), [6](#), [13](#); *Stukanov v Canada*, [2022 FC 1421](#), para [2](#)

PART III – SUBMISSIONS**A) THE PROPER RESPONDENT TO THIS APPEAL IS THE ATTORNEY GENERAL OF CANADA**

40. The Federal Court decision under appeal was made on an application in which the Attorney General of Canada was the sole applicant. The Attorney General of Canada is therefore the proper respondent on appeal.⁵¹ Canada requests that the style of cause in this matter be amended to name the Attorney General of Canada as the sole respondent, and that the Court direct the Registry to take any necessary steps to give effect to this amendment.

B) THE FEDERAL COURT DID NOT ERR IN DECLARING MR. TURMEL A VEXATIOUS LITIGANT

41. This Court may interfere with the Federal Court decision under s. 40 only if it is based on an error of law, or a palpable and overriding error of fact or inextricably mixed fact and law.⁵²

42. In declaring Mr. Turmel a vexatious litigant, the Application Judge carefully reviewed Mr. Turmel's litigation history, and relied on well-established legal principles concerning s. 40 and the Federal Court's plenary jurisdiction. On appeal, Mr. Turmel does not allege any error in the Application Judge's identification of these legal principles, but asserts that the Application Judge erred in finding that Mr. Turmel has brought meritless proceedings, and in finding that he has refused to follow court orders and rules.

43. However, as detailed below, these findings of fact or mixed fact and law were amply supported by the record before the Application Judge, and Mr. Turmel has not established that they are tainted by error, let alone a palpable and overriding error. This Court should accordingly dismiss this appeal.

⁵¹ *Federal Courts Rules*, s [338\(1\)](#)

⁵² *Hospira Healthcare Corporation v Kennedy Institute of Rheumatology*, [2016 FCA 215](#), paras [66](#), [79](#); *Ubah* FCA, para [3](#)

1) **The Application Judge did not err in finding Mr. Turmel's proceedings meritless**

44. In describing Mr. Turmel's proceedings as meritless, the Application Judge observed that Mr. Turmel has personally instituted at least 67 court proceedings, and has recruited others to file more than 800 proceedings, nearly all of which have been unsuccessful. The Application Judge noted that common reasons for dismissal have included that the proceedings failed to disclose a reasonable cause of action, were frivolous, vexatious or an abuse of process, or were unsupported by evidence. He also observed that Mr. Turmel has acknowledged his litigation kits are ineffective.⁵³

45. On appeal, Mr. Turmel does not dispute that he brought or encouraged others to bring these proceedings, or that the proceedings were dismissed for the reasons identified by the Application Judge. However, Mr. Turmel asserts that the proceedings were not in fact meritless, and that judges who dismissed them erred in doing so.

46. For example, Mr. Turmel asserts in his Memorandum that various judges have "failed to see the logic" in his proceedings, and erred by disagreeing with "righteous" requests.⁵⁴ With respect to the Application Judge's related finding that he often re-litigates issues, Mr. Turmel similarly asserts that "I don't refile to show the judges who are wrong, I refile to find a judge who will be right."⁵⁵

47. This Court should reject these arguments. It was not open to the Federal Court on a s. 40 application, and it is not open to this Court on appeal, to question the court decisions in Mr. Turmel's prior cases. The proper course instead if Mr. Turmel wished

⁵³ Application Decision, paras [3-4](#), [8-9](#), [25-26](#), [39-40](#), [42](#), **AB, Vol 1, Tab B, p 21-22, 27-28, 33-34**

⁵⁴ Appellant's Memorandum of Fact and Law, paras 61, 63, 64 (see also paras 3, 14) ("Appellant's Memorandum")

⁵⁵ Appellant's Memorandum, para 65

to challenge these prior decisions was for him to appeal. Indeed, Mr. Turmel has done so in many cases, although his appeals have been almost entirely unsuccessful.⁵⁶

48. Moreover, even if it were open to the Federal Court or this Court to review them, Mr. Turmel has not established a reviewable error in any of these prior decisions. He asserts that his second challenge to federal COVID-19 mitigation measures was not an abuse of process because it focused on different measures than his first challenge. He also asserts that one court misinterpreted the word “gain” in order to convict him of gaming offences, and that his actions in violating a publication ban were justified. However, the courts in each of these cases expressly considered and rejected these arguments.⁵⁷ Mr. Turmel has identified no error in these analyses.

49. At points in his Memorandum, Mr. Turmel suggests that, even if his proceedings were dismissed, they have ultimately achieved their goal or assisted others. For example, he notes that Parliament amended the audit-expense provisions of the *Canada Elections Act* after his Federal Court claim challenging those provisions, and alleges that Health Canada granted several applications for registration to produce cannabis after his kit users filed claims or motions challenging the application processing time. In the criminal sphere, Mr. Turmel also asserts that his proceedings resulted in the staying of 4,000 charges or in “sweet deals” for his kit users.⁵⁸

50. However, Mr. Turmel cites no evidence or authority for these claims, or that his proceedings were responsible for any of these outcomes. Indeed, far from assisting

⁵⁶ Application Decision, paras [8](#), [11-12](#), [14-15](#), [17-18](#), [20-21](#), [23](#), [41](#), **AB, Vol 1, Tab B, p 22-27, 34**

⁵⁷ Appellant’s Memorandum of Fact and Law, paras 14, 20, 77; Minarovich Affidavit, Exhibit 14 (Ontario Court of Justice decision, dated May 16, 1994, paras 27-39; Court of Appeal for Ontario decision, dated August 13, 1996, paras 48-55; leave refused Supreme Court of Canada decision, dated October 31, 1996), **AB, Vol 1, Tab D, p 234-36, 257-61**, Exhibit 16 (Superior Court of Québec decision, dated July 12, 2002, paras 19, 24-44), **AB, Vol 1, Tab D, p 286-88**; *Turmel v Canada*, [2022 FC 732](#), para [12](#)

⁵⁸ Appellant’s Memorandum, paras 10, 23, 25, 37-39, 85

others, the Application Judge observed that Mr. Turmel's kits have in fact caused direct harm to their users, many of whom were ordered to pay costs after their proceedings were dismissed.⁵⁹

51. In any event, even if Mr. Turmel's proceedings had merit or have indirectly assisted others (which is denied), the Court has affirmed in the s. 40 context that merit alone cannot justify the use of abusive tactics.⁶⁰ In this case, the Application Judge found Mr. Turmel's abusive tactics have included re-litigating issues, intentionally flooding courts with proceedings, and scandalous allegations against judges and other parties. Mr. Turmel does not dispute any of these findings, and they are alone sufficient to support the Application Judge's ultimate conclusion that Mr. Turmel's conduct is both ungovernable and harmful.

2) **The Application Judge did not err in finding that Mr. Turmel has refused to follow court orders and rules**

52. In declaring him a vexatious litigant, the Application Judge observed that Mr. Turmel has ignored, disregarded or refused to comply with court orders and rules.⁶¹ While Mr. Turmel now asserts that he has ignored only one court order, and has always followed court rules, the Application Judge's findings to the contrary were amply supported by the record.⁶²

53. As the Application Judge noted, Mr. Turmel has been convicted of contempt for violating a publication ban. He has repeatedly attempted to make submissions on behalf of other plaintiffs despite Rule 119 and multiple admonitions from the Federal

⁵⁹ Application Decision, paras [26](#), [45-46](#), **AB, Vol 1, Tab B, p 27, 34-35**

⁶⁰ *Nelson v Canada*, [2003 FCA 127](#), para [24](#)

⁶¹ Application Decision, paras [3](#), [25](#), [46](#), **AB, Vol 1, Tab B, p 21, 27, 35**

⁶² Appellant's Memorandum, paras 21, 81, 89, 91

Court that he is not permitted to do so, and he and his kit users have often missed legislated and court-ordered deadlines.⁶³

54. The Application Judge also observed that Mr. Turmel has refused to comply with numerous costs orders.⁶⁴ On appeal, Mr. Turmel now asserts that it is not a matter of him “refusing to pay” these costs, but of him being unable to pay. However, he filed no evidence of inability to pay in the Court below, and any assertion of impecuniosity is belied by Canada’s evidence that he has paid more than \$4,000 in costs for one of his kit users, and has offered on social media to pay filing fees for hundreds of others.⁶⁵ This Court should accordingly reject this argument, and dismiss Mr. Turmel’s appeal.

PART IV – ORDER SOUGHT

55. Canada requests an order dismissing this appeal, with costs. It also requests that the style of cause in this matter be amended by removing Her Majesty the Queen and substituting the Attorney General of Canada as the respondent, and that this Court direct the Registry to take any necessary steps to give effect to this amendment.

Signed at Toronto, Ontario, this 29th day of March, 2023



Jon Bricker
Counsel for the Respondent

⁶³ Application Decision, paras [19](#), [43-44](#), **AB, Vol 1, Tab B, p 25, 34**; Minarovich Affidavit, paras 69-71, 114, 123, 145, 147-48, 202, 262, 301, **AB, Vol 1, Tab D, p 65-66, 76, 80, 85-88, 105, 123-24, 139**; *Federal Courts Rules*, s [119\(1\)](#)

⁶⁴ Application Decision, paras [3](#), [38](#), [46](#), **AB, Vol 1, Tab B, p 21, 33, 35**

⁶⁵ Application Decision, paras [5](#), **AB, Vol 1, Tab B, p 21**; Minarovich Affidavit, paras 175, 192, 201, 238, **AB, Vol 1, Tab D, p 97, 102-03, 105, 115**

PART V – LIST OF AUTHORITIES

Badawy v 1038482 Alberta Ltd (Intelliview Technologies Inc), [2019 FC 504](#)

Canada v Fabrikant, [2019 FCA 198](#)

Canada v Ubah, [2021 FC 1466](#), aff'd [2023 FCA 26](#)

Coote v Canada, [2021 FCA 150](#)

Fudge v Canada, CFN T-693-22 and several other proceedings (Judgment of Horne, Associate Judge, dated July 4, 2022, unreported)

Fudge v Canada, CFN T-693-22 and several other proceedings (Order of Horne, Associate Judge, dated July 27, 2022, unreported)

Hospira Healthcare Corporation v Kennedy Institute of Rheumatology, [2016 FCA 215](#)

Lawyers' Professional Indemnity Company v Coote, [2013 FC 643](#) (and Order of Hughes J, dated June 13, 2013, unreported), aff'd [2014 FCA 98](#)

Nelson v Canada, [2003 FCA 127](#)

Potvin v Rooke, [2019 FCA 285](#)

Simon v Canada, [2019 FCA 28](#)

Stukanov v Canada, [2022 FC 1421](#)

Turmel v Canada, [2022 FC 732](#)

Turmel v Canada, [2022 FCA 166](#)

Virgo v Canada, [2019 FCA 167](#)