No: A-265-22

FEDERAL COURT OF APPEAL

Between:

John Turmel

Applicant

Appellant

AND

His Majesty The King

Respondent

REPLY ON MOTION FOR RECONSIDERATION

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Applicant's Written Representations.....(2)

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APPLICANT'S WRITTEN REPRESENTATIONS
IN REPLY ON MOTION FOR RECONSIDERATION

1. This Court must have been surprised to learn in my Motion for Reconsideration that Canada had written in the February 28 2023 letter of Jon Bricker:

> **Canada advised of its intention to bring a motion for an order declaring the appellant a vexatious litigant in the Federal Court of Appeal (the "Motion").. Specifically, Canada intends to seek directions or orders:**
> **4. That the Motion be heard orally, together with the underlying appeal; and**

2. The Written Representations in the Motion to declare the Appellant a "Vexatious Litigant" are virtually identical to its Aug 11 2022 Federal Court Memorandum whose issues are being appealed and in my Mar 29 2023 Appeal Memorandum.

3. In the Motion Written Representations, Canada says:

> **17. Mr. Turmel now explains that he did not respond to Canada's motion because he was under the mistaken belief that it would be heard orally together with his appeal. However, it is unclear on the facts how Mr. Turmel could have arrived at this belief given the March 6 Direction and the clear indicators in Canada's motion record that the motion was brought in writing. In any event, even if Mr. Turmel was under this mistaken belief, Rule 397 is available only to correct errors by the Court, and not errors by a party.**

4. My arriving at the belief that the motion would be heard orally with the appeal was not unclear given Canada's Feb 28 2023 letter and para.6 herein which says:

> **6. Canada sent a further letter to this Court on February 28, 2023. This letter... advised of Canada's intention to seek a direction or order in case management that its motion be heard orally, together with the appeal.**

5. Canada mentions how the appeal is ready for hearing but did not mention that it had told the Court the motion was intended to be argued orally before the Court of Appeal panel, not in writing before 1 judge. Canada reneged on the intent it had indicated to the Court to have its motion heard orally by switching to motion in writing under Rule 369.

6. Is there any reason the Court of Appeal panel could not have dealt with the Motion in writing after the appeal? This Court acting on the Motion for a "Vexatious Litigant" declaration before the appeal of the Federal Court 'Vexatious Litigant" Order did not have the benefit of my response on the appeal. And since my opposing arguments were in the Appeal Memorandum, shouldn't that have been the venue with judges apprised of both sides of the issues?

7. So this Court was faced with a motion in writing without being informed we had been told it was going to be argued orally before the appeal panel. Omitting to inform that the Court expected the motion to be argued orally misled this Court into duplicating the work of the panel with only one side of the arguments.

8. Canada says reconsideration should only be entertained if some important matter had been overlooked. This Court did not have the benefit of both sides of the arguments. The opposition arguments from my Appeal Memorandum on the same issues were overlooked herein.

9. Canada says the Court may grant the motion while the appeal is pending but this could influence the appeal panel. What if the Appeal Court should find that the litigations brought had some merit and sets aside the Declaration from below. What do do about the premature Declaration herein? Would the panel have to say this Court didn't have the benefit of my opposing arguments?

10. Respondent erred in presenting the Motion to extend the Federal "Vexatious Litigant" Order now under appeal to 1 judge before it could be sustained by the Court of Appeal because it now prejudices the appeal.

Dated at Brantford on Jul 10 2023

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