

SUPREME COURT OF YUKON

Citation: *Wood v. Yukon (Government of)*,
2018 YKSC 34

Date: 20180720
S.C. No. 17-AP019
Registry: Whitehorse

BETWEEN:

JUANITA WOOD

(Petitioner)
Respondent

AND

GOVERNMENT OF YUKON
As represented by the Public Service Commission and Yukon Human Rights
Commission Members Chabot, Knutson, Moir and Bouvier

(Respondent)
Applicant

Before Madam Justice G. Miller

I.H. Fraser
Juanita Wood
Yukon Human Rights Commission

Counsel for the Applicant
Self-Represented
No one appearing

REASONS FOR JUDGMENT

INTRODUCTION

[1] Juanita Wood has before this Court, an Amended Amended Petition, filed April 11, 2018, for judicial review of the decision made by Yukon Human Rights Commission Members Chabot, Knutson, Moir and Bouvier made May 26, 2017. The Respondent Government of Yukon filed an Application May 17, 2018 seeking an order 1) declaring Juanita Wood to have persistently instituted vexatious proceedings and conducted proceedings in a vexatious manner; 2) prohibiting Juanita Wood from instituting a

proceeding on behalf of herself or another person except by leave of the Supreme Court of Yukon; 3) dismissing this petition for judicial review, with costs; and 4) awarding the Government of Yukon its costs of this application.

[2] In the course of submissions on the Application, counsel for the Applicant indicated he was not seeking to have the petition for judicial review dismissed, but simply that Ms. Wood be declared a vexatious litigant such that she would not be permitted to proceed further with this petition without leave of the Court.

[3] Juanita Wood's position is that there is no factual basis or legal basis for declaring her to be a vexatious litigant.

FACTS

[4] On February 5, 2015, Juanita Wood was released during her probationary period from her employment with the Department of Highways and Public Works, Government of Yukon. Ms. Wood appealed to the Deputy Minister, who upheld the decision on March 5, 2015.

Proceeding One ("Proceeding One")

[5] On March 5, 2015, Ms. Wood complained to the Yukon Workers' Compensation, Health and Safety Board, alleging that her release on probation had been a reprisal for raising safety concerns at work, in contravention of s. 18 of the *Occupational Health and Safety Act*, RSY 2002, c. 159. On November 13, 2015, Safety Officer Pahl found that prosecution of the employer was not warranted. On November 23, 2015, Ms. Wood appealed Safety Officer Pahl's decision. On February 1, 2016, the Appeal Panel issued a decision declaring that it would not interfere with the decision not to prosecute.

[6] On February 5, 2016, Ms Wood filed a request for reconsideration of the Appeal Panel's decision. On May 27, 2016, Ms Wood withdrew the reconsideration request and her appeal. On June 27, 2017, Ms Wood sought to restart her appeal with the Yukon Workers' Compensation, Health and Safety Board, with submissions filed on December 7, 2017. However, on December 11, 2017, Ms Wood withdrew her application to reopen the appeal.

Proceeding Two (“Proceeding Two”)

[7] On May 27, 2016, Ms Wood commenced a civil action against the Department of Highways and Public Works, seeking reinstatement as well as damages. On October 6, 2017, Ms Wood amended her statement of claim. On October 12, 2016, Ms Wood applied to amend her amended statement of claim to add causes of action and several additional parties, including the Assistant Deputy Minister and the Public Service Commissioner. On December 7, 2016, Justice Gower of the Supreme Court of Yukon denied Ms Wood's application and dismissed Ms. Wood's claim on the basis that it disclosed no reasonable cause of action, was vexatious, and an abuse of process.

[8] On January 5, 2017, Ms Wood appealed the order of Justice Gower, to the Court of Appeal of Yukon, which quashed the appeal on the basis that it was so devoid of merit that it would be an abuse of the procedure of the court to allow it to proceed.

Proceeding Three (“Proceeding Three”)

[9] On April 27, 2017, Ms Wood filed a petition for judicial review of her termination. On November 24, 2017, Ms Wood filed an amended petition. On January 4, 2018, the petition was set down to be heard on May 16-17, 2018. On May 11, 2018 the petition was dismissed on consent of the parties.

Proceeding Four (“Proceeding Four”)

[10] On April 5, 2016, Ms Wood complained to the Yukon Human Rights Commission alleging discrimination by the Government of Yukon, and seeking, amongst other relief, reinstatement to her position with the Department of Highways and Public Works. On October 14, 2016, the Director of Human Rights decided to stop the investigation of Ms Wood's Human Rights complaint, in part because the part relating to her dismissal on probation was found to be vexatious. In respect of the other relief sought, it was found to be out of time. Ms Wood requested a reconsideration of the Director's decision.

[11] On May 26, 2017, the Yukon Human Rights Commission (named in this Petition) confirmed the Director's decision, declaring that it would be vexatious to allow Ms Wood's complaint to proceed. The Commission also agreed that the other relief sought was out of time.

[12] On March 14, 2018, Ms. Wood filed this petition for judicial review against the “Government of Yukon as represented by the Public Service Commission and Yukon Human Rights Commission Members”, seeking an order that the decision of Commission Members Chabot, Knutson, Moir and Bouvier be set aside and that the matter be remitted back to Commission members or alternatively that the matter be referred to a Board of Arbitration. Ms. Wood sought an order for “judicial decision” seeking to overturn the Director's October 14, 2016 decision to stop the investigation into Ms Wood's complaint. Ms Wood has amended the petition twice, on March 27 and April 11, 2018.

Proceeding Five (“Proceeding Five”)

[13] On January 22, 2018, Ms Wood filed another petition seeking judicial review of the Yukon Workers' Compensation, Health and Safety Board's handling of her March 5, 2015 complaint. Ms Wood subsequently amended her Petition four times (February 9, March 2, April 13 and 23, 2018). On May 3, 2018, Justice Bielby of the Supreme Court of Yukon dismissed the petition, striking the claim for being vexatious. On June 1, 2018, Ms Wood filed a notice of appeal from Justice Bielby's decision.

[14] Ms Wood takes the position that as a self-represented litigant she has relied on advice and direction from others, sometimes in error and has therefore pursued relief in the wrong forum. She submits this explains the multiplicity of proceedings seeking essentially the same relief.

LAW

[15] Section 7.1 of the *Supreme Court Act*, R.S.Y., 2002 c. 211, amended by S.Y. 2013, c.15 provides that:

(1) If on application or its own motion, the Court is satisfied that a person has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner, it may, after giving notice to the Attorney General of Yukon and giving the person the opportunity to be heard, order that except by leave of the Court

(a) the person must not institute a proceeding on behalf of themselves or another person; or

(b) a proceeding previously instituted by the person must not be continued.

[16] What constitutes a vexatious proceeding has been identified in several decisions, including *Re Lang Michener v. Fabian* (1987), 59 O.R. (2d) 353 (H.C.J.), at para. 19:

(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;

...

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

[17] These factors have been cited in numerous other cases, including decisions of the Supreme Court of Yukon and British Columbia Court of Appeal. In *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24. Bielby J. found that the petition pursued by Ms Wood in that instance and the history of her persistent litigation of this issue met many, if not all of these factors.

ANALYSIS

[18] The Applicant submits that all of these proceedings commenced by Ms Wood have been attempts by Ms Wood to overturn the termination of her employment with the

Department of Highways and Public Works during her probationary period. All of these proceedings simply present the same events through a different lens, re-litigating claims that have already been dismissed on their merits.

[19] The Applicant submits that three of the proceedings initiated by Ms Wood have been held to be vexatious by Yukon courts, and two proceedings before administrative tribunals have been dismissed or terminated for similar reasons.

[20] Juanita Wood in her material describes six actions in respect of her dismissal from her employment with the Department of Highways and Public Works, Government of Yukon. This count encompasses the appeal to the Court of Appeal of Yukon as a separate action.

[21] Ms Wood disputes the findings made at each step of each proceeding except that she concedes the finding made by the Supreme Court in *Wood v. Yukon (Highways and Public Works)*, 2016 YKSC 68, that the action was vexatious and an abuse of the courts process, because the appeal from this decision was quashed. Ms Wood submits this is the sole finding of vexatious conduct before this Court and there is therefore no basis upon which to find that she has “persistently” instituted proceedings. This Court in *Ramirez v. Mooney*, 2017 YKSC 22, at para. 53, held that “persistently instituted vexatious proceedings” requires that there must be at least two proceedings.

[22] Ms Wood disputes that the Court of Appeal of Yukon made a finding that the appeal was “so devoid of merit that it would be an abuse of procedure of the court to allow it to proceed”. The Court of Appeal of Yukon, in its decision at 2017 YKCA 4, at para. 24, found that it was “one of the rare cases in which the appeal should be quashed on the basis that it is devoid of merit and bound to fail.”

[23] It is clear, however, at para. 10 of the decision, that the test the Court applied to each of Ms Wood's grounds of appeal was whether "it is so devoid of merit or substance that it would be an abuse of the procedure of the court to allow it to proceed through the normal appeal process." I find this meets the definition of vexatious.

[24] Ms Wood submits that this Court cannot rely on tribunal findings of vexatiousness to meet the criteria of persistence in s. 7.1. She submits that as tribunals are not courts it would be wrong to rely on those findings of vexatiousness. Further, she submits, the decision of the Yukon Human Rights Commission is the subject of this petition for judicial review. Before that review is conducted, Ms Wood submits, this Court cannot rely on the findings of the Yukon Human Rights Commission.

[25] Counsel for the Applicant relies on the decision in *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91, at para. 30 indicating that the analysis may be informed by the litigant's conduct in the courts below. Further, in *Thompson v International Union of Operating Engineers Local No. 995*, 2017 ABCA 193, at paras. 24-25, it was indicated that a court may take judicial notice of the public record as evidence of the nature and degree of a litigant's misconduct, even in unrelated proceedings. In that case it was found that the case management judge properly considered the litigant's conduct in unrelated Occupational Health and Safety proceedings.

[26] *Ramirez v. Mooney*, cited above, at para. 53, held that "persistently instituted vexatious proceedings" require that there must be at least two proceedings, but there is no requirement that the proceedings must all originate in the same court in Yukon.

[27] I find that I may properly consider the findings of vexatiousness by Gower J. in *Wood v. Yukon (Highways and Public Works)* 2016 YKSC 68, and the findings made by the Court of Appeal of Yukon in the appeal of that decision. I find, therefore, that there have been at least two vexatious proceedings.

[28] I recognize that Bielby J.'s decision in *Wood v. Yukon (Occupational Health and Safety Branch)* 2018 YKSC 24, is currently under appeal, and I therefore do not rely on that decision in my finding that there have been at least two vexatious proceedings. I do however agree with Bielby J.'s analysis and findings in that case that the petition and the history of Ms Wood's persistent litigation of the same issue meets many if not all of the factors required for a finding that the litigation is vexatious.

[29] This petition adds one more layer to the history of Ms Wood's persistent litigation of the issue of her dismissal from the Department of Highways and Public Works. As I am not asked today to make a determination as to the merits of this petition I do not take into account the findings of vexatiousness made by the Yukon Human Rights Commission, although I find that I could, were those conclusions not the subject of this petition.

[30] As noted by the Federal Court of Appeal in *Canada v. Olumide* 2017 FCA 42 at para. 28, citing *Canada (Attorney General) v. Mishra*, [2000] F.C.J. No. 1734 (C.A.), an order declaring someone to be a vexatious litigant does not put an end to a right to pursue legal claims. The only legal effect of the order is to ensure that the claims of such litigants are pursued in an orderly fashion, under a greater degree of Court supervision than applies to other litigants. The underlying policy consideration is to

appropriately manage court resources in order to meet the needs of the broader community.

[31] In Proceeding One, Ms Wood sought to appeal but did not follow through; the case did not come before the Supreme Court of Yukon. In Proceeding Three, Ms Wood initiated proceedings in the Supreme Court of Yukon but ultimately consented to a dismissal; the other three proceedings have all been brought before this Court as petitions for judicial review.

[32] I do not rely on Proceeding One as vexatious conduct in and of itself. This was the first proceeding. Ms Wood has explained that she was frustrated by the lack of direction and/or misdirection as to the procedure to follow.

[33] I do rely on, and find that Ms Wood's conduct in Proceeding Three was vexatious, both in respect of the substance of the proceedings and the fact that she chose not to proceed after engaging significant judicial resources. In reaching this conclusion I take into consideration Ms Wood's submission that she simply chose not to pursue this matter to its end because she could not afford to pay a lawyer to do so.

[34] I am satisfied that this series of actions amount to "persistently instituted vexatious proceedings" as contemplated in s. 7.1(1) of the *Supreme Court Act*, cited above. I find that the findings of vexatiousness in the other proceedings as noted above are persuasive. They are clearly articulated and solidly based in law and fact. I take into account in arriving at this finding, in particular, that Ms Wood's conduct in persistently taking unsuccessful appeals can be considered vexatious conduct of legal proceedings. I find that in these circumstances it does.

[35] I direct myself, in determining whether Ms Wood's conduct is vexatious, to look at the whole history before me. I am satisfied that Ms Wood has brought all of the proceedings noted above to determine the same issue: the validity of her dismissal from the Department of Highways and Public Works. I find that that issue has already been determined by courts of competent jurisdiction.

[36] The Application is therefore granted. There will be an order declaring Juanita Wood to have persistently instituted vexatious proceedings and conducted proceedings in a vexatious manner and prohibiting Juanita Wood from further proceeding with this petition for judicial review or from instituting a proceeding on behalf of herself or another person in this Court except by leave of the Supreme Court of Yukon.

COSTS

[37] At the conclusion of the hearing I reserved my decision on the Application but asked for submissions from both parties on costs of the Application.

[38] Counsel for the Applicant asked for its costs of the Application fixed at \$4,500. No Bill of Costs was produced.

[39] Ms Wood submitted that costs should be limited to \$500 in accordance with Appendix B, Scale B of the Supreme Court of Yukon *Rules of Court*.

[40] The Applicant was the successful party. I agree with Ms Wood that this was a matter of ordinary difficulty. In this case the Application was opposed and took less than half a day for the hearing.

[41] Ms Wood is ordered to pay the Applicant's costs of the Application fixed at \$550 plus \$120 in lieu of disbursements in accordance with Appendix B, Scale B of the

Supreme Court of Yukon *Rules of Court* within thirty days.

MILLER J.