

COURT OF APPEAL OF YUKON

Citation: *Wood v. Yukon (Public Service Commission)*,
2019 YKCA 4

Date: 20190305
Docket: 18-YU830

Between:

Juanita Wood

Appellant
(Petitioner)

And:

**Government of Yukon,
As represented by the Public Service Commission and
Yukon Human Rights Commission Members
Chabot, Knutson, Moir and Bouvier**

Respondent
(Respondent)

Before: The Honourable Mr. Justice Savage
The Honourable Madam Justice Fisher
The Honourable Madam Justice Smallwood

Application pursuant to s. 12.1 of the *Court of Appeal Act*, R.S.Y. 2002, c. 47

The Appellant appearing in person: J. Wood

Counsel for the Respondent: I.H. Fraser

Place and Date of Hearing: Whitehorse, Yukon
November 22, 2018

Place and Date of Judgment: Vancouver, British Columbia
March 5, 2019

Written Reasons by:

The Honourable Madam Justice Smallwood

Concurred in by:

The Honourable Mr. Justice Savage
The Honourable Madam Justice Fisher

Summary:

The Government of Yukon applies for an order prohibiting Ms. Wood from instituting or continuing proceedings in the Court of Appeal except by leave of the Court on the grounds that she has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner. Held: Application granted. Ms. Wood has initiated multiple proceedings, both in this Court and in other courts and tribunals, that were intended to re-litigate issues already decided and which have already been deemed vexatious. Given this litigation history, Ms. Wood meets the standard of having persistently instituted vexatious proceedings and, as such, shall not institute or continue proceedings in this Court without leave.

Reasons for Judgment of the Honourable Madam Justice Smallwood:**Introduction**

- [1] The Government of Yukon has brought an application pursuant to section 12.1 of the *Court of Appeal Act*, R.S.Y. 2002, c. 47, seeking to prohibit Juanita Wood from instituting a proceeding in the Court of Appeal on behalf of herself or another person without leave of the Court.
- [2] This application was heard following the hearing of two appeals brought by Ms. Wood. These appeals were heard on November 21 and 22, 2018, and dismissed on November 22 and December 19, 2018: *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKCA 16 (“*Wood Appeal No. 1*”); and *Wood v. Yukon (Public Service Commission)*, 2018 YKCA 15 (“*Wood Appeal No. 2*”).
- [3] In *Wood Appeal No. 1*, Ms. Wood appealed a decision of the Supreme Court of Yukon dismissing a petition she had brought pursuant to Rule 20(26) of the *Rules of the Supreme Court of Yukon*, O.I.C. 2009/65, on the basis that it disclosed no reasonable claim, was vexatious and amounted to an abuse of the process of the court: *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24.

[4] In *Wood Appeal No. 2*, Ms. Wood appealed a decision of the Supreme Court of Yukon declaring that she had persistently instituted vexatious proceedings and conducted proceedings in a vexatious manner: *Wood v. Yukon (Government of)*, 2018 YKSC 34. The decision prohibited Ms. Wood from continuing with her petition for judicial review or from instituting a proceeding on behalf of herself or another person in the Supreme Court of Yukon without leave of the Court.

Background

[5] Ms. Wood was hired by the Government of Yukon's Department of Highways and Public Works in February 2014 as a heavy equipment operator. On February 5, 2015, while Ms. Woods was still in her probationary period, the Department terminated her employment on the basis that she was unsuitable for continued employment. Following her termination, Ms. Wood commenced a number of proceedings seeking various remedies, all of which have been dismissed, struck or withdrawn.

[6] Ms. Wood first appealed her termination to the Deputy Minister of the Department of Highways and Public Works. The Deputy Minister dismissed the appeal on March 5, 2015, concluding that the employer's concerns about Ms. Wood's conduct and behaviour were substantiated.

[7] On March 5, 2015, Ms. Wood filed a complaint with the Yukon Workers' Compensation Health and Safety Board, claiming that her termination was a reprisal for her raising safety concerns at work contrary to section 18(1)(a) of the *Occupational Health and Safety Act*, R.S.Y. 2002, c. 159. A safety officer reviewed Ms. Wood's complaint and, on November 13, 2015, determined that the employer had not contravened the Act and that prosecution of the employer was not warranted.

[8] Ms. Wood appealed the decision of the safety officer to an Appeal Panel of the Yukon Workers' Compensation Health and Safety Board. In a decision rendered February 1, 2016, the Appeal Panel declined to interfere with the safety officer's decision not to prosecute. Ms. Wood filed a request for reconsideration of the Appeal

Panel's decision on February 5, 2016, which she later withdrew in May 2016. In June 2017, Ms. Wood sought to revive her appeal with the Yukon Workers' Compensation Health and Safety Board. However, in December 2017, she withdrew her application to reopen the appeal.

[9] On April 5, 2016, Ms. Wood filed a complaint with the Yukon Human Rights Commission, alleging that her employer, the Government of Yukon, had discriminated against her on the basis of her sex. She sought, among other forms of relief, reinstatement to her position with the Department of Highways and Public Works. On October 14, 2016, the Director of Human Rights discontinued the investigation into the complaint, prompting Ms. Wood to request a re-consideration of that decision. The Yukon Human Rights Commission confirmed the Director's decision on May 26, 2017.

[10] On May 27, 2016, Ms. Wood commenced an action against the Department of Highways and Public Works, seeking reinstatement as well as damages. On December 7, 2016, Gower J. struck the claim on the basis that it disclosed no reasonable cause of action, was vexatious and amounted to an abuse of process: *Wood v. Yukon (Highways and Public Works)*, 2016 YKSC 68. Ms. Wood appealed that decision to this Court and, on May 25, 2017, the appeal was quashed for being devoid of merit: *Wood v. Yukon (Highways and Public Works)*, 2017 YKCA 4.

[11] On April 27, 2017, Ms. Wood filed a petition seeking judicial review of the decision of the Department of Highways and Public Works to terminate her employment. This petition was dismissed by consent on May 11, 2018.

[12] On November 21, 2017, Ms. Wood laid a private information alleging a breach of s. 18(1)(a) of the *Occupational Health and Safety Act*. This information was withdrawn in January 2018.

[13] On January 22, 2018, Ms. Wood filed a petition seeking judicial review of the manner in which the Yukon Workers' Compensation Health and Safety Board handled her March 5, 2015 complaint. On May 3, 2018, Bielby J. struck the petition for being an abuse of process and otherwise vexatious and disclosing no reasonable claim: *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24.

[14] Ms. Wood's appeal of that decision was dismissed by this Court in *Wood Appeal No. 1*, as described above.

[15] On March 14, 2018, Ms. Wood filed a petition for judicial review of the decision of the Yukon Human Rights Commission to discontinue the investigation into her complaint. The Government of Yukon, the respondent in that matter, applied for orders declaring Ms. Wood to be a vexatious litigant and prohibiting her from instituting proceedings in the Supreme Court without leave. On July 20, 2018, Miller J. found that Ms. Wood had persistently instituted vexatious proceedings and had conducted proceedings in a vexatious manner: *Wood v. Yukon (Government of)*, 2018 YKSC 34. Justice Miller accordingly prohibited Ms. Wood from continuing with her petition and from instituting another proceeding on behalf of herself or another person in the Supreme Court except with leave of the Court.

[16] Ms. Wood's appeal of that decision was dismissed by this Court in *Wood Appeal No. 2*, as described above.

[17] Following the hearing of Ms. Wood's two appeals in this Court, the Government of Yukon brought an application under section 12.1 of the *Court of Appeal Act* to prohibit Ms. Wood from instituting a proceeding in the Court of Appeal on behalf of herself or another person without leave of the Court.

Applicable Law

[18] Section 12.1(1) of the *Court of Appeal Act* states:

12.1(1) If on application or on its own motion, the Court of Appeal 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 of Appeal

- (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.

[19] Section 12.1 is similar to section 7.1 of the *Supreme Court Act*, R.S.Y. 2002, c. 211. Both sections require that a court be satisfied that a litigant has either “persistently instituted vexatious proceedings” or “conducted a proceeding in a vexatious manner”. The first of these conditions requires that a litigant has instituted more than one proceeding. The second condition does not.

[20] In determining whether a litigant has persistently instituted vexatious proceedings under section 7.1, a judge of the Supreme Court may consider the litigant’s history of conduct in other courts or tribunals: *Ramirez v. Mooney*, 2017 YKSC 22 at para. 53. Section 12.1 of the *Court of Appeal Act*, in my view, properly admits of similar considerations, particularly in light of its similar wording that is not restricted to proceedings commenced “in the court”: see *R.D. Backhoe Services Inc. v. Graham Construction and Engineering Inc.*, 2017 BCCA 91 at para. 30; *Thompson v. International Union of Operating Engineers Local No 995*, 2017 ABCA 193 at para. 25.

[21] In *Wood Appeal No. 2* at para. 9, this Court endorsed the approach taken in *Ramirez*, which permits a court to consider the whole history of a matter in deciding whether to make an order under s. 7.1, but the Court added the following caution:

[12] ... While the Supreme Court may consider the history of a litigant’s conduct in other courts or tribunals in assessing whether a litigant has persistently instituted vexatious proceedings, it must not lose focus on the litigant’s conduct in the Supreme Court in determining whether an order is necessary to prevent an abuse of that court’s process.

That caution is equally applicable to applications made under s. 12.1 in this Court. Although the Court may take into account the litigant's conduct in other courts or tribunals, it must not neglect to consider the litigant's conduct in the Court of Appeal in determining whether an order is necessary to prevent an abuse of the process of the Court of Appeal.

[22] The factors to be considered in a vexatious litigant application were set out in *Lang Michener Lash Johnston v. Fabian* (1987), 37 D.L.R. (4th) 685 (Ont. H.C.) 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;
- (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;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[23] These factors have been referred to in other cases, including other litigation involving Ms. Wood: see e.g., *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24; *Wood Appeal No. 1*; *Wood Appeal No. 2*.

Position of the Parties

[24] The Applicant argues that Ms. Wood has brought numerous proceedings before administrative tribunals, the Supreme Court of Yukon and this Court, all of which have been attempts to overturn, or claim damages from, the termination of her employment with the Department of Highways and Public Works. These proceedings dealt with the same events but were presented through a different lens. Aside from the original proceeding, which was dismissed on the merits, all of Ms. Wood's claims re-litigated issues that had already been dismissed. Further, Ms. Wood's actions have been determined by the Supreme Court of Yukon to be persistently instituting vexatious proceedings in that court.

[25] Ms. Wood opposes this application, arguing that it has been brought for the improper purpose of frustrating her pending or future litigation and is without merit. Moreover, at the hearing, she argued that she has had only two unsuccessful proceedings in the Court of Appeal, which is insufficient, in her view, to ground a vexatious litigant declaration in this Court. Ms. Wood argued that even if she was unsuccessful in *Wood Appeal No. 2* (which was on reserve at the time of the hearing), she would still have had only three proceedings in the Court of Appeal — a number she says is still insufficient to ground a vexatious litigant declaration.

Analysis

[26] Since the termination of her probationary employment, Ms. Wood has instituted several proceedings in various venues, each with the ultimate aim, as she acknowledged, of regaining her employment with the Government of Yukon. There have been previous findings that proceedings brought by Ms. Wood were vexatious.

[27] On October 14, 2016, the Director of Human Rights discontinued the investigation into Ms. Wood's complaint because the complaint was being "pursued for improper reasons and, as such, is vexatious." Ms. Wood requested a reconsideration of the decision. The Yukon Human Rights Commission confirmed the Director's decision on May 26, 2017, and concluded that to permit the investigation to continue would be to misuse the complaint process for improper reasons, as it was vexatious.

[28] In 2016, Gower J. struck Ms. Wood's claim against the Department of Highways and Public Works (2016 YKSC 68), in which she sought reinstatement and damages, on the basis that it disclosed no reasonable cause of action, was vexatious and amounted to an abuse of process. Justice Gower concluded:

[49] I further conclude that the amended statement of claim is unnecessary and vexatious. This is because it purports to be an appeal from Ms. Wood's dismissal on probation when, as a member of the Public Service Alliance of Canada, she has already exhausted the appeal process through the application of the *Public Service Labour Relations Act*, the *Public Service Act*, and the Collective Agreement. There is simply no right of appeal from the decision of the Deputy Minister of HPW of March 5, 2015. It is therefore obvious that Ms. Wood's action cannot succeed.

[29] Ms. Wood's appeal of that decision to this Court was quashed for being devoid of merit. In its ruling, however, the Court made no specific finding with respect to whether the chambers judge was justified in concluding that Ms. Wood's claim was vexatious.

[30] In *Wood v. Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 24, Ms. Wood's petition for judicial review was dismissed, being struck in part for being vexatious. After finding that the petition should be struck as an abuse of court process, Bielby J. went on to say:

[23] Second, Ms. Wood's petition should be struck because it is vexatious. In addition to attempting to advance a claim which has already been determined, she is attempting to use a vehicle created to punish employers for breach of a statutory duty to create a right of reinstatement for herself.

[31] In dismissing Ms. Wood's appeal of this decision, this Court concluded that Ms. Wood's petition was an abuse of process:

[30] ... Ms. Wood was seeking indirectly what she had already been foreclosed from seeking directly: a remedy—specifically, reinstatement—for what she asserts was a wrongful termination of her employment. Not only was the previous action struck, the process under the collective agreement was exhausted. That she seeks in this appeal a declaration that she was "reprised against" further confirms her persistent goal to obtain the same remedy in yet another forum.

[32] In granting the Government of Yukon's application for an order declaring Ms. Wood to be a vexatious litigant in the Supreme Court of Yukon, Miller J., in *Wood v. Yukon (Government of)*, 2018 YKSC 34 stated:

[34] ... 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 about 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.

[33] In dismissing Ms. Wood's appeal of that decision, this Court concluded that Ms. Wood had persistently instituted vexatious proceedings:

[26] I cannot accept Ms. Wood's submission that her claims are "the legitimate assertion of legislated rights under three separate pieces of legislation". While she may have used different vehicles, her destination was always the same: to determine the validity of the termination of her employment with the Department of Highways and Public Works. There was ample evidence to support the judge's conclusion that the history of Ms. Wood's persistent litigation was to this aim, and that this met many of the factors to be taken into account in an application under s. 7.1.

[27] In this case, those factors include (1) bringing numerous proceedings to determine an issue that was already determined; (2) bringing proceedings that were bound to fail; (3) repeating the same issues in different forms in subsequent proceedings and seeking superficially different remedies; and (4) persistently taking unsuccessful appeal and reviews before the various tribunals and courts.

[34] Three proceedings instituted by Ms. Wood in the Supreme Court of Yukon have been considered to be vexatious. All of her appeals from those decisions have been dismissed. This is in addition to the finding by the Director of Human Rights that Ms. Wood's complaint was vexatious — a finding that was confirmed on re-consideration by the Yukon Human Rights Commission. It is apparent, as has been stated before, that all of Ms. Wood's proceedings have been brought with the aim of re-examining the validity of the termination of her employment with the Department of Highways and Public Works, an issue that has already been decided.

[35] Another factor to consider is that Ms. Wood has been declared a vexatious litigant in the Supreme Court of Yukon. The declaration that Ms. Wood is a vexatious litigant in the Supreme Court does not mean that Ms. Wood can no longer pursue any claims in that court. It means that Ms. Wood's access to the courts is regulated and she is required to obtain leave before instituting a proceeding. Ms. Wood may be granted leave if the Supreme Court of Yukon is satisfied that she has a *bona fide* reason to assert a claim that is not frivolous and vexatious: see e.g., *Canada v. Olumide*, 2017 FCA 42 at paras. 27–29.

[36] One of Ms. Wood's arguments was that she had brought only three proceedings in the Court of Appeal. She contrasted this situation with the case of *Olumide*, in which the respondent was declared a vexatious litigant after having brought over 40 matters before the courts. I do not find the comparison persuasive. On this point, I would echo the comments of Fisher J.A. in *Wood Appeal No. 2*:

[25] ... I appreciate the contrast here, but it is important to note that the definition of "vexatious", in the context of s. 7.1 of the *Supreme Court Act*, encompasses many different circumstances that do not require an extreme volume of matter. It is also important to note the observations of Stratas J.A. in *Olumide*, that too often, vexatious proceedings are not commenced for months or years, after much damage has been done.

[37] In determining whether Ms. Wood's has pursued vexatious proceedings, I have taken into account the whole history of proceedings and more particularly the matters she has brought to appeal. Having done so, I am convinced that Ms. Wood's litigation history, as well as her conduct in this Court, meets the standard of having persistently instituted vexatious proceedings. This includes bringing numerous proceedings to determine an issue that had already been decided, persistently bringing unsuccessful appeals and reviews before various tribunals and courts, instituting proceedings that were bound to fail, and seeking to re-litigate the same issues in different forms in subsequent proceedings while seeking superficially different remedies.

Disposition

[38] For all of these reasons, I would grant the application with costs to the Government of Yukon. It is therefore ordered that Ms. Wood cannot institute a proceeding in the Court of Appeal on behalf of herself or another person without leave of the Court.

“The Honourable Madam Justice Smallwood”

I agree:

“The Honourable Mr. Justice Savage”

I agree:

“The Honourable Madam Justice Fisher”