

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20181128**

**Docket: A-169-18**

**Citation: 2018 FCA 218**

**Present: STRATAS J.A.**

**BETWEEN:**

**IVANCO KEREMELEVSKI**

**Appellant**

**and**

**UKRAINIAN ORTHODOX CHURCH OF ST. MARY AND  
MYKHAYLO POZDYK, KATHERINE MISKE, BILL MISKE &  
RCMP (ROYAL CANADIAN MOUNTED POLICE), ROB  
HUTCHES, MICHAEL GATT, COLIN BELL, CAROL  
BRADLEY, IAN McPHAIL, Q.C. & ATTORNEY-GENERAL OF  
CANADA AND MINISTER OF JUSTICE AND JOHN DOE 1, 2, 3...**

**Respondents**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on November 28, 2018.

**REASONS FOR ORDER BY:**

**STRATAS J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20181128**

**Docket: A-169-18**

**Citation: 2018 FCA 218**

**Present: STRATAS J.A.**

**BETWEEN:**

**IVANCO KEREMELEVSKI**

**Appellant**

**and**

**UKRAINIAN ORTHODOX CHURCH OF ST. MARY AND  
MYKHAYLO POZDYK, KATHERINE MISKE, BILL MISKE &  
RCMP (ROYAL CANADIAN MOUNTED POLICE), ROB  
HUTCHES, MICHAEL GATT, COLIN BELL, CAROL  
BRADLEY, IAN McPHAIL, Q.C. & ATTORNEY-GENERAL OF  
CANADA AND MINISTER OF JUSTICE AND JOHN DOE 1, 2, 3...**

**Respondents**

**REASONS FOR ORDER**

**STRATAS J.A.**

[1] By order dated October 16, 2018, this Court declared the appellant a vexatious litigant under section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7. Among other things, it ordered

that, in the words of subsection 40(1), “no further proceedings be instituted by [the appellant] in [this] Court.”

[2] Left unaddressed was what should happen to the appellant’s appeal pending before this Court (file A-169-18). This Court called for submissions on that issue. It has received and considered those submissions.

[3] Subsection 40(1) gives the Court two powers. One is to make the order set out above. The other power is to order that “a proceeding previously instituted by the person in that court not be continued, except by leave of the court.”

[4] This part of subsection 40(1) speaks of discontinuance, not dismissal. There is a difference between the two: *Philipos v. Canada*, 2016 FCA 79, [2016] 4 F.C.R. 268. The former contemplates that circumstances may change prompting the resurrection of the proceeding; the latter terminates a proceeding once and for all. To some extent, as *Philipos* explains, the difference is somewhat illusory. Leave of the Court is required to resurrect a discontinued proceeding and leave is not easy to come by: significant obstacles must be surmounted.

[5] The nature of this power under subsection 40(1) settles the issue of whether this Court has to sit as a single judge or as a three-judge panel. Dismissals are granted by a minimum of three judges of this Court, not one: *Rock-St. Laurent v. Canada (Citizenship and Immigration)*, 2012 FCA 192, 434 N.R. 144. Issues relating to discontinuance are heard by judges of this Court sitting alone: see, e.g., *Philipos*.

[6] A single judge of this Court can declare a litigant vexatious under section 40 of the *Federal Courts Act: Federal Courts Act*, s. 16. This extends to the additional power under section 40 to order that pending proceedings in this Court be discontinued.

[7] In this case, the notice of appeal and other materials prepared by the appellant contain bald assertions, are inflammatory, and are scandalous and irrelevant, as those terms are understood under the *Federal Courts Rules*, SOR/98-106. The appeal and the appellant's conduct in prosecuting its exhibit vexatious characteristics. On the material before me, I find that the appeal has been brought to pursue the collateral purpose of injury, rather than pursuing a legitimate remedy in good faith. The purposes behind section 40, discussed in *Olumide v. Canada*, 2017 FCA 42, [2018] 2 F.C.R. 318, are implicated in this case and outweigh the appellant's interests in continuing his appeal.

[8] Therefore, this Court will order that the appeal in file A-169-18 shall not continue.

[9] The file in the Registry should not languish in limbo. It should be closed.

[10] If at some future time the appellant moves for leave to continue his appeal, the Registry may open a preliminary file. Only if leave is granted on the basis of the principles in *Philipos* shall file A-169-18 be reopened.

“David Stratas”

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-169-18

**STYLE OF CAUSE:**

IVANCO KEREMELEVSKI v.  
UKRAINIAN ORTHODOX  
CHURCH OF ST. MARY *et al.*

**MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES**

**REASONS FOR ORDER BY:**

STRATAS J.A.

**DATED:**

NOVEMBER 28, 2018

**WRITTEN REPRESENTATIONS BY:**

Ivanco Keremelevski

ON HIS OWN BEHALF

Mark E.W. East

FOR THE RESPONDENT,  
ATTORNEY GENERAL OF  
CANADA

**SOLICITORS OF RECORD:**

Nathalie G. Drouin  
Deputy Attorney General of Canada

FOR THE RESPONDENT,  
ATTORNEY GENERAL OF  
CANADA