

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190610**

**Docket: A-387-18**

**Citation: 2019 FCA 174**

**Present: STRATAS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**DR. V.I. FABRIKANT**

**Respondent**

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on June 10, 2019.

**REASONS FOR ORDER BY:**

**STRATAS J.A.**

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20190610**

**Docket: A-387-18**

**Citation: 2019 FCA 174**

**Present: STRATAS J.A.**

**BETWEEN:**

**ATTORNEY GENERAL OF CANADA**

**Applicant**

**and**

**DR. V.I. FABRIKANT**

**Respondent**

**REASONS FOR ORDER**

**STRATAS J.A.**

[1] The Attorney General has brought an application for a declaration that Dr. Fabrikant is a vexatious litigant.

[2] Recently, on April 15, 2019, I made a direction of an administrative nature that helped Dr. Fabrikant in two ways:

- I allowed Dr. Fabrikant to serve his memorandum of fact and law by fax. He is an inmate in a federal penitentiary and, thus, has limited means by which to serve opposing parties. In the past, he has complained about difficulties in serving materials and so he sought permission to serve materials by fax. I granted his wish.
- I directed the Registry to prepare Dr. Fabrikant's responding record, at the Registry's expense, from materials already supplied by Dr. Fabrikant. This was to assist Dr. Fabrikant and, consistent with Rule 3, get the application ready for a hearing on the merits.

[3] I also asked for submissions on whether two other motions filed by Dr. Fabrikant were now moot: a motion for an order permitting him to serve by fax in all proceedings and a motion for an order for an extension of time to file a respondent's record.

[4] In response, Dr. Fabrikant has declined to address the mootness issue. Instead, he has brought a motion asking that I recuse myself from any further involvement in this application. He extends this request to another judicial colleague. I will dismiss the motion, substantially for the same reasons I offered in an earlier recusal motion: *Fabrikant v. Canada*, 2018 FCA 224.

[5] Dr. Fabrikant says my recusal is justified because of certain small administrative errors I have made when dealing with his various matters. He alleges lack of capacity on my part. He considers me and my judicial colleague to be biased.

[6] In my view, upon a reading of the material filed and a consideration of the wider context, Dr. Fabrikant is just unhappy with the regulatory measures I have recently imposed upon him and the steps I have taken to manage this application so that it can be ready for hearing soon.

[7] I confirm that I have approached and will continue to approach Dr. Fabrikant's matters with an open mind. Proof of this may well be seen from my decisions on April 15, 2019, described above, which were favourable to Dr. Fabrikant.

[8] As for apparent bias, all of my reasons, orders and directions give very detailed explanations. The appearance—and, for that matter, the reality—is that I am deciding matters carefully and judicially, on proper criteria, with full transparency and no apparent or actual *animus* towards Dr. Fabrikant.

[9] It is true that in a recent matter (*Fabrikant*, above at para. 37) I suggested that another judge deal with interlocutory matters and the merits of this application. However, that was only a suggestion.

[10] The Chief Justice is responsible for assignments in our Court. He assigned me to deal with these motions. I must accept this assignment, absent any disqualifying bias. And, as explained, there is no disqualifying bias here. I will now determine the motions.

[11] In all, four motions remain before the Court: a motion seeking reasons for the order dismissing Dr. Fabrikant's motion on January 17, 2019, a motion asking for the ability to file by

fax in all proceedings, a motion for an extension of time to file the respondent's record, and a motion requiring the Registry to put these motions before the Court.

[12] The last motion is unnecessary and is summarily dismissed. The second-last motion has not been filed. I direct that it be filed.

[13] For the reasons that follow, responses from the Attorney General on these motions are not necessary. The Court can adjudicate the motions without hearing submissions from the Attorney General.

[14] The motion for better reasons for the January 17, 2019 Order will be dismissed. A preamble to the Order stated that the motion had no merit. These are reasons. The Order is final and cannot be reopened. If Dr. Fabrikant wishes to challenge it, he can now seek leave to appeal from the Supreme Court of Canada.

[15] The motion to file by fax in all proceedings will be dismissed for mootness. He is to file one last document in this application, his memorandum of fact and law. It may be filed by fax. Presently, no other proceedings can be prosecuted; all are stayed.

[16] The motion for an extension of time to file the respondent's record will be dismissed for mootness. As mentioned above, my recent direction directed the Registry to prepare the respondent's record. Below, I provide for the filing of the respondent's memorandum of fact and law.

[17] Certain directions for the conduct of this application must now be given. I am guided by two things.

[18] First, I note that 180 days has passed since the notice of application has been filed and a hearing date for the vexatious litigant application has not been set. Normally this would entitle the Court to issue a status review and to consider visiting consequences upon a party for the delay. The application must be heard on the merits soon.

[19] Second, I note that the motions I will be dismissing fit a long-standing pattern. Dr. Fabrikant has a propensity to try to take control of legal proceedings by filing multiple motions that are filled with invective, creating confusion and attempting to manipulate and intimidate fair-minded decision-makers. This will not happen here.

[20] The Registry will file the respondent's record by June 20, 2019. I amend the direction of April 15, 2019 by excluding the respondent's memorandum of fact and law from the respondent's record. The direction of April 15, 2019 noted that a copy of the respondent's record need not be sent to the parties as they have the materials that comprise the record. The parties shall be sent the table of contents to the respondent's record.

[21] The respondent's memorandum of fact and law shall be filed separately from the respondent's record. It must be filed by June 20, 2019. The respondent may file his memorandum by fax. If the June 20, 2019 deadline is not met, the respondent will be deemed to have waived his right to file it.

[22] No more interlocutory motions of any sort are permitted. If any interlocutory relief is sought, it may be requested orally at the hearing of the application.

[23] As a result, between now and the hearing of the application, the only permitted filing of the respondent will be his memorandum of fact and law. The Registry shall reject all other documents of any sort from the respondent.

[24] In addition to the submissions that the parties wish to make on the application, the Court directs the parties to address the following at the hearing of the application: if the respondent is declared to be a vexatious litigant (a) what regulatory terms should appear in the order and (b) what should happen to the respondent's other proceedings presently pending in this Court?

[25] The application will be heard by video-conference on any of July 3-5 and July 8-9, 2019 for a duration of two hours. The Judicial Administrator will canvass the parties' preferences. The Chief Justice then will issue an order setting down the hearing. The date set will be peremptory.

"David Stratas"

---

J.A.

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:**

A-387-18

**STYLE OF CAUSE:**

ATTORNEY GENERAL OF  
CANADA v. DR. V.I.  
FABRIKANT

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

**REASONS FOR ORDER BY:**

STRATAS J.A.

**DATED:**

JUNE 10, 2019

**WRITTEN REPRESENTATIONS BY:**

Sherry Rafai Far

FOR THE APPLICANT

Dr. V.I. Fabrikant

ON HIS OWN BEHALF

**SOLICITORS OF RECORD:**

Nathalie G. Drouin  
Deputy Attorney General of Canada

FOR THE APPLICANT