

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131017

Docket: A-228-13

Citation: 2013 FCA 246

Present: STRATAS J.A.

BETWEEN:

ANTHONY COOTE

Appellant

and

**LAWPRO PROFESSIONAL INDEMNITY
COMPANY**

Respondent

Dealt with in writing without appearance of parties.

Order delivered at Ottawa, Ontario, on October 17, 2013.

REASONS FOR ORDER BY:

STRATAS J.A.

Federal Court of Appeal



Cour d'appel fédérale

Date: 20131017

Docket: A-228-13

Citation: 2013 FCA 246

Present: STRATAS J.A.

BETWEEN:

ANTHONY COOTE

Appellant

and

LAWPRO PROFESSIONAL INDEMNITY
COMPANY

Respondent

REASONS FOR ORDER

STRATAS J.A.

[1] The appellant applies for a stay of the Order of the Federal Court (*per* Hughes J.) dated June 13, 2013: see reasons at 2013 FC 643. In that Order, the appellant was declared a vexatious litigant under section 40 of the *Federal Courts Act*, R.S.C. 1985, c. F-7.

[2] Among other things, the Order purports to prohibit the appellant “from directly or indirectly, instituting or continuing any proceedings in the...Federal Court of Appeal, except with leave of a judge of the Federal Court of Canada.”

[3] On its strict terms, this prohibits the appellant from appealing the Order to this Court.

[4] Pending the appellant’s stay motion, this Court has accepted his revised notice of appeal dated August 28, 2013.

[5] Among other things, the revised notice of appeal alleges that the Federal Court failed to “apply facts and authorities in an even-handed manner.”

[6] To stay the order of the Federal Court, the appellant must satisfy the Court that there is a serious issue to be determined, the appellant will suffer irreparable harm if the stay is denied, and the balance of convenience favours granting the stay: *RJR-MacDonald Inc v. Canada (Attorney General)*, [1994] 1 S.C.R. 311 at page 334.

[7] I cannot say that the above-mentioned ground in the notice of appeal is devoid of any possibility of success. The test for determining whether a “serious issue” is present is very low, and is equivalent to whether the issue is frivolous or vexatious.

[8] As for irreparable harm, if the Order is not stayed, the appellant will not have a right to appeal this Order. It takes away a fundamental civil right – the right to launch and maintain civil

proceedings. In saying this, I pass no comment on the propriety of the Order. Sometimes vexatious litigant orders, as serious as they are, are justified by the evidence before the Court. For present purposes, the denial of a right to appeal to the appellant causes him irreparable harm.

[9] In my view, the balance of convenience lies in the appellant's favour. As mentioned above, the consequences to him of an inability to appeal the Order are significant. As the judge who has handled many of the matters already raised by the appellant in this matter, I do not at all minimize the bother and expense suffered by the respondent to date. However, at the conclusion of this proceeding, if it is successful, it may ask for a significant costs award. While there is no assurance that such an award will indemnify it completely, if granted it will lower the harm suffered by it.

[10] There is no basis for staying the Order beyond permitting this appeal to proceed.

[11] Therefore, I shall stay the Order to the extent necessary to allow this appeal to proceed.

[12] I am permitted under Rule 53 to attach terms to my Order. In light of the appellant's conduct to date, described in paragraph 9, above, and in order to minimize inconvenience that may be caused to the respondent, the stay is granted on condition that in this appeal the appellant abide by all time limits under the *Federal Courts Rules*, SOR/98-106. Any failure to do so may result in the dismissal of this appeal without further notice to him.

[13] The appellant is warned that the remainder of the Federal Court's Order remains in effect. This means that, without leave of the Court, he may not institute new proceedings or continue any proceedings other than this appeal.

[14] There shall be no costs on this motion.

“David Stratas”

J.A.

FEDERAL COURT OF APPEAL

NAMES OF COUNSEL AND SOLICITORS OF RECORD

DOCKET: A-228-13

STYLE OF CAUSE: ANTHONY COOTE v. LAWPRO
PROFESSIONAL INDEMNITY
COMPANY

MOTION DEALT WITH IN WRITING WITHOUT APPEARANCE OF PARTIES

REASONS FOR ORDER BY: STRATAS J.A.

DATED: OCTOBER 17, 2013

WRITTEN REPRESENTATIONS BY:

Anthony Coote ON HIS OWN BEHALF

Faren Bogach FOR THE RESPONDENT

SOLICITORS OF RECORD:

WeirFoulds LLP FOR THE RESPONDENT
Toronto, Ontario