



[2021] 4 F.C.R. D-20

PRACTICE

Discontinued proceedings — Leave requirements for vexatious litigants — Preliminary motion seeking permission to bring application under *Federal Courts Act*, R.S.C., 1985, c. F-7, s. 40(3), for leave to appeal order that removed plaintiff's amended statement of claim from record, that dismissed his action — Statement of claim alleging that various persons working for Immigration, Refugees and Citizenship Canada (IRCC) had wronged plaintiff — Struck for failing to disclose reasonable cause of action, for being vexatious — Plaintiff declared vexatious litigant — Having to obtain permission from Court before seeking leave to institute any new proceeding or continue any previously instituted proceeding — Requirement to seek permission of Court additional preliminary step before application for leave made under s. 40(3) — In light of this, inappropriate to apply same criteria for granting permission as are applied for granting leave — Focus of analysis in deciding whether to grant leave is whether proceeding abuse of process, whether reasonable grounds for proceeding — Sole question herein is whether to grant plaintiff permission to seek leave under s. 40(3) to pursue appeal of order — Relevant considerations include whether party seeking permission followed procedural requirements set out in Court's order; whether proposed proceeding attempt to relitigate already settled matter; whether any other reason to indicate not in public interest to allow matter to proceed to leave stage — Second, third criteria not "watertight compartments", analysis with respect to them may be interwoven — Criteria meant to be applied with degree of flexibility — In substance, plaintiff complying with procedural requirements, satisfying first factor — As to second, third elements, plaintiff's proposed approach to his pleadings confusing — In light of this, question whether, on initial review of material, proceeding having merit under second element, whether, under third element, in public interest that proceeding be brought to end now — Here, plaintiff's request so confusing impossible to conclude request having merit — Allowing proceeding to continue to leave stage adding to defendant's, Court's burden — Preliminary motion denied.

UBAH V. CANADA (T-756-20, 2022 FC 343, Pentney J., reasons for order dated March 14, 2022, 20 pp.)