

CANADA / JUDGMENT

Felger v. British Columbia (Attorney General)

2022 BCSC 1885

COURT

Supreme Court of British Columbia

DECIDED

27 October 2022

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2022 BCSC 1885 Felger v. British Columbia (Attorney General)

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Felger v. British Columbia (Attorney General),

2022 BCSC 1885

Date: 20221027

Docket: 92376

Registry: Abbotsford

Between:

Tim Felger

Informant/Applicant

And

Attorney General of British Columbia

and The Honourable Judge Sicotte

Respondents

Before: The Honourable Mr. Justice Dley

Reasons for Judgment

Appearing on his own behalf:

T.L. Felger

Counsel for the Crown:

L.A. Ruzicka, K.C.

Place and Date of Hearing:

Abbotsford, B.C.

September 26, 2022

Place and Date of Judgment:

Abbotsford, B.C.

October 27, 2022

Introduction

- [1] Mr. Felger has filed an application seeking prerogative relief in the nature of certiorari and mandamus with respect to decisions made approximately 17 months ago.
- [2] Mr. Felger does not have legal counsel. The question is whether it is in the interests of justice to grant an extension of time when the application for relief should have been filed within six months.
- [3] For the reasons that follow, it is not in the interests of justice to grant an extension and the application for prerogative relief is dismissed.

Background Facts

- [4] Mr. Felger swore four private informations alleging various criminal offences against people involved in his family litigation with respect to parenting issues concerning his daughter. The named defendants included lawyers, judges, police officers and staff of the Ministry of Children and Family Development. A process hearing was held on September 25, 2020 in Provincial Court. On October 15, 2020, Judge Sicotte refused to issue process.
- [5] Judge Sicotte invited Mr. Felger to provide submissions as to whether he had the jurisdiction to designate Mr. Felger as a vexatious or abusive litigant and, if so, whether such a designation should be made with respect to the swearing of private informations.
- [6] On November 20, 2020, Judge Sicotte determined that he had the jurisdiction to make the designation and concluded that Mr. Felger should be designated a vexatious litigant: *Felger (Re)*, 2020 BCPC 221. Judge Sicotte said the following at para. 76:
- [76] It is beyond question that Mr. Felger's seven-year pattern in swearing private Informations warrants designation as a vexatious litigant. It appears that Mr. Felger swears out criminal charges against many of the social workers, police officers, lawyers and judges that did not do something in the way that Mr. Felger thought they should. He also repeatedly swears Informations against his ex-common law wife J.D. and people that she may associate with

from time to time. This is a colossal waste of time and resources for the Provincial Court and the Crown. While I only examined the files that Mr. Felger had sworn in the Abbotsford registry (approximately 67), in the vast majority Mr. Felger did not even have sufficient evidence or clarity of charge for process to issue. In the five cases where process was issued, Crown Counsel directed a Stay of Proceedings almost immediately (leading of course to Mr. Felger laying private Informations against those Crown Counsel).

[7] Judge Sicotte made the following orders:

1. Neither Timothy Lee Felger nor anyone acting on his behalf shall swear or attempt to swear any private Information in any registry of the Provincial Court of British Columbia unless that Information contains a verifiable certification on the bottom that it was drafted by a member in good standing of the Law Society of British Columbia.
2. Registry staff in the registries of the Provincial Court of British Columbia are authorized to verify the certification and discard any document that is attempted to be sworn in contravention of this order.
3. Timothy Lee Felger will not present evidence at any Process Hearing in British Columbia unless, at that hearing, he is represented by a member in good standing of the Law Society of British Columbia.
4. Timothy Lee Felger may apply to vary this order provided the application is filed by and spoken to by a member in good standing of the Law Society of British Columbia.

[8] Judge Sicotte referred to the decision in the process hearing as follows at paras. 9-10:

[9] In reasons provided separately in a closed court, I concluded the Process Hearing by refusing to issue process on any of the counts or Informations that Mr. Felger had sworn. Amongst others, he swore charges against judges, lawyers, social workers and police officers.

[10] Some of the charges were untenable on their face. On others, Mr. Felger failed to provide evidence on essential elements. On still others, I declined to issue process based on my finding that Mr. Felger brought the charges against J.D. and C.U. for a vexatious or abusive purpose.

[9] Mr. Felger intended to seek certiorari and mandamus with regard to Judge Sicotte's refusal to issue process. He also wants to seek certiorari of the order naming him a vexatious litigant. However, Mr. Felger failed to file his application within the six-month required time. This application considers whether it is in the interests of justice to allow him to file regardless.

Mr. Felger's Argument

[10] Mr. Felger says that he was unable to file his application in a timely manner for the following reasons:

- a) preparing from October 2020 to March 2021 for a four-day civil trial in March 2021 (Felger v. Banov, 2021 BCSC 1592);
- b) from January 2022 for five months, disagreements with court registry staff as to the manner of application to be filed;
- c) relocation of the Abbotsford Courthouse;
- d) COVID-19;
- e) fear of the sheriffs when attending the courthouse; and
- f) lack of access to the Courthouse Library.

[11] Mr. Felger says that as a result of the foregoing reasons, the actual delay was from April to December 2021 - a period of about eight months.

[12] Mr. Felger was given wide latitude to expand upon his written material. He said that the family proceedings concerning his daughter were not fair. He argued that the justice system was used to prosecute political opposition or political enemies. He maintained that the private informations naming Provincial Court judges were because they had breached their duty by making the wrong decisions. If he had succeeded in his family litigation, the private informations would not have been filed; it would have been "water under the bridge".

[13] The theme of Mr. Felger's arguments are highlighted in his written submissions where he included the following comments:

To describe this as one event as of 30 October 2021 is to misdescribe the time the [sic] reasonably required to respond so I could win, given the earlier context of all the fraud and obstruction by these court operatives. Including misconduct by Judges, Crown, justice, police and lawyers.

[.]

It is not contrary to the interests of justice or unreasonable for this application to proceed in the circumstances.

Where delay in advancing a claim is not because of a lack of good faith, but because of some other reason, relief should be allowed. I assert to refuse the relief requested would be unreasonable given the misconduct of all the judges, Crown and police for over a decade.

[]

Lawless state engaging in selective prosecution of political enemies

I have never really had any headaches in my life related to stress except this [sic] last few years since Judge Sicotte, judge Skilnick and Justice Basran. I get terrible migraines now just thinking about the lack of intellectual integrity and the malicious slander in their reasons' [sic] for judgement.

[]

It is submitted that there are reasons for this delay-the Crown's failure to act as counsel for the Police informant, statements of malicious slander made in the Reasons for judgement of judge Skilnick and Judge Sicotte. The applicant argues that the disinformation and malicious slander and the reasons for judgement and decision by Judge Sicotte has radically changed the nature of the case to be met and further, it is impossible for the court to determine the speed with which the matter should have progressed as the Applicant's emotional and physical health has to be considered since corruption in the court system is very depressing to overcome when you keep losing because of obstruction by the judge.

Justice Basran and his decision to trespass upon the applicant's matters between Mr. Felger and Mr. Banov where he in essence re-victimizes the Informant, Applicant and caused a lack of income and increased expenses and time for an appeal to be filed. I asked for 3.3 million and he gave me 5,000. His excluding documents like Contracts, Incorporation contracts, discovery transcripts, Police Reports and allowing hearsay evidence from Banov is really an insult to the justice system. His reasons for judgement amount to malicious slander against the Informant.

Justice Basran trespassed upon my case and sabotaged my appeal with his Reasons for Judgement with malicious slander failure to admit the evidence [sic].

[]

The contempt of court and arrest of a judge for breach of a prescribed duty is well within the jurisdiction of the legislation. Moreover, it is not shown to be in any way in conflict with any [sic].

The associate chief judge participated in the fraud and obstruction upon the court and aided and abetted the perpetrators to escape justice.

The basic complaint is Abbotsford has been the worst run courthouse in BC if not Canada for some time and regularly discriminated against undesirables like me.

The second complaint is that the PC judges regularly act as Agents for the Crown and obstruct justice to cause a false outcome. Judges Brown, Rounthwaite, Skilnick, Sicotte, Adams. These judges listed above regularly receive perjury, know it is perjury because of their comments and accept it as evidence to base their decisions on.

I can say for a fact that the Abbotsford Courthouse is overloaded and dysfunctional because the Crown will participate in fraud upon the court and will maliciously prosecute undesirables. The Judges have no regard to a fair settlement for the Fathers [in] any family matter, i.e. an order that will work in practical terms so the file keeps reappearing on the docket for years.

My experience is that child safety is never the consideration in deciding custody, and I sometimes wonder if the Judges from the provincial and supreme courts have ever read the Family Law Act concerning protecting the child to the greatest extent possible. There is a lack of training and understanding of the law and a prescribed duty.

- [14] Mr. Felger spent much of his argument talking about his passion to serve the community and helping the homeless.

Crown Argument

- [15] The Crown refers to Rule 4(2) of the Criminal Rules of the Supreme Court of British Columbia, SI/97-140, which states that an application for certiorari shall be filed and served within six months after the order to which it relates. Rule 1(10) allows for an extension of time where the interests of justice are satisfied.
- [16] The test for an extension of time to appeal or as is the case here, with respect to an application for prerogative relief was summarized in *R v. Roberge*, 2005 SCC 48 at para. 6:
- [6] The power to extend time under special circumstances in s. 59(1) of the Act is a discretionary one. Although the Court has traditionally adopted a generous approach in granting extensions of time, a number of factors guide it in the exercise of its discretion, including:
1. Whether the applicant formed a bona fide intention to seek leave to appeal and communicated that intention to the opposing party within the prescribed time;
 2. Whether counsel moved diligently;
 3. Whether a proper explanation for the delay has been offered;
 4. The extent of the delay;
 5. Whether granting or denying the extension of time will unduly prejudice one or the other of the parties; and
 6. The merits of the application for leave to appeal.
- The ultimate question is always whether, in all the circumstances and considering the factors referred to above, the justice of the case requires that an extension of time be granted.
- [17] The Crown acknowledges that there is no prejudice if the extension is granted because the issue is confined to a legal question.
- [18] However, the Crown says that Mr. Felger did not have a bona fide intention to appeal within the prescribed time. As an example, the Crown points out that Mr. Felger was complaining about Judge Sicotte before the impugned decision was even rendered; Mr. Felger concedes that to be correct.
- [19] The Crown argues that Mr. Felger has not moved diligently, nor offered a proper explanation for the delay. In all of the circumstances, the Crown says that the delay is simply too long.
- [20] The Crown says that the most significant factor to consider is whether there are any merits to the application for prerogative relief. The Crown says there are none.

- [21] The Crown argues that certiorari and mandamus are extraordinary remedies, available only in narrow circumstances.
- [22] In *R. v. Awashish*, 2018 SCC 45, the Court confirmed that certiorari is only available to the parties in a criminal proceeding when the provincial court has made a jurisdictional error (at paras. 2, 20). Jurisdictional errors occur when the lower tribunal has acted outside of their statutory jurisdiction: *R. v. Russell*, 2001 SCC 53 at para. 19. Specifically, in criminal proceedings there is a jurisdictional error where "the court fails to observe a mandatory provision of a statute or where a court acts in breach of the principles of natural justice": *Awashish* at para. 23.
- [23] In *Government of the Republic of Italy v. Piperno*, [1982] 1 S.C.R. 320 at 329, the Court stated that mandamus is narrowly available only where "jurisdiction is in issue respecting the performance of a statutory duty as where there is a denial or excess of jurisdiction."
- [24] Both are discretionary forms of relief that are not available as of right.
- [25] The Crown submits that the absence of any merit is fatal to the application for an extension of time.

Discussion

- [26] Access to the courts is a fundamental right for all citizens. Access to the courts is not synonymous with an abuse of the right, nor is it an entitlement to abuse the right. Mr. Felger's conduct in pursuing the private informations is simply an abuse.
- [27] Mr. Felger's self-expressed justification for the laying of private informations is premised upon his belief that anyone who disagreed with his outlook or position was guilty of a criminal offence. It is nothing more than an attempt to intimidate or inconvenience those involved in the justice system.
- [28] Mr. Felger has a lengthy history in the courts. Although he is self-represented and provided with some latitude, that is not an entitlement for Mr. Felger to be given free rein to ignore or trample upon court procedures.
- [29] Mr. Felger concedes that there was an eight-month delay that was not consumed by other proceedings. I am not convinced that there is any reasonable explanation worthy of being accepted that justifies the absence of filing the application for relief between April 2021 and December 31, 2021. This alone is not fatal to the application for an extension, but it is a factor.

- [30] Of particular significance is the absence of any merit to the application for prerogative relief. Mr. Felger's reason for filing the private informations was his dissatisfaction with the outcome of various proceedings. The wild and far ranging accusations against those participants in the justice system cannot be justified and were properly dismissed by Judge Sicotte. To allow this charade to continue would simply bring the administration of justice into ridicule.
- [31] These circumstances are eerily similar to those in *Holland v. British Columbia (Attorney General)*, 2022 BCSC 1388, where the comments of the Court, at para. 27, are pertinent to the circumstances here:
- [27] On even a cursory review, it is readily apparent that Ms. Holland employs the tool of the private prosecution as a means of attempting to air all her grievances with a variety of individuals, including justice system participants, politicians, public officials and judges, over perceived injustices. Even if facially valid, these private informations are transparent attempts to abuse the process of the court, demonstrated by their content and the sheer number of informations laid.
- [32] I, therefore, conclude that there is no merit to Mr. Felger's application for certiorari or mandamus.
- [33] Mr. Felger's position that Judge Sicotte exceeded his jurisdiction by imposing restrictions on his access to the court must also fail.
- [34] After refusing to issue process, Judge Sicotte rightfully asked "what is to stop Mr. Felger from simply swearing a new private information against the same individuals alleging the same misdeeds?": *Felger (Re)* at para. 11.
- [35] Judge Sicotte considered whether the Provincial Court had jurisdiction to declare Mr. Felger as a vexatious litigant. After a detailed analysis, he concluded that it did have jurisdiction and made the declaration along with various orders to govern Mr. Felger's future conduct.
- [36] The judge was entitled to exercise control over the Provincial Court's own process and prevent its process from abuse: *Houwelling Nurseries Ltd. v. Houwelling*, 2010 BCCA 315 at para. 40; *Holland* at paras.15-19.
- [37] The restrictions imposed by Judge Sicotte were reasonable and restrained. They were entirely appropriate in the circumstances.
- [38] The result is that Mr. Felger's application for prerogative relief is devoid of merit. It is not in the interests of justice to grant an extension of time to file the applications.

Conclusion

- [39] Mr. Felger's application for an extension of time to file for prerogative relief as submitted on May 17, 2022 is dismissed.

"S.D. Dley J."

DLEY J.

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