

SUPREME COURT OF YUKON

Citation: *Wood (Re)*, 2022 YKSC 80

Date: 20221228
S.C. No. 22-08584
Registry: Whitehorse

JUANITA WOOD

In the matter of an application under s. 774 of the *Criminal Code*

Before Chief Justice S.M. Duncan

Endorsement

[1] Juanita Wood seeks to bring an application in the Supreme Court of Yukon under s. 774 of the *Criminal Code* for an order in the nature of *certiorari* quashing the May 27, 2022 judgment of Gill J. under s. 507.1 of the *Criminal Code*, in addition to an order in the nature of *mandamus* remitting the matter to the Territorial Court of Yukon for a new hearing. Ms. Wood attempted to file the materials with the Supreme Court of Yukon registry. The materials were referred to me because of an existing order from the Supreme Court of Yukon, confirmed by the Court of Appeal of Yukon, that Juanita Wood requires leave of the Court to institute any new proceedings, as a result of previous findings of persistently instituting vexatious proceedings and conducting proceedings in a vexatious manner. The issue is whether the Supreme Court of Yukon should grant leave to hear Juanita Wood's current application for *certiorari* and *mandamus* under s. 774 of the *Criminal Code* of the order of the Territorial Court of Yukon not to issue process of the Informations after the s. 507.1 hearing.

[2] I will briefly review the previous legal proceedings brought by Juanita Wood and their outcomes. Then, I will summarize the current application and the Territorial Court of Yukon Judge's conclusion before providing my analysis and decision.

[3] Juanita Wood was employed by the Department of Highways and Public Works, Government of Yukon. She was released from that employment during her probationary period in 2014. Juanita Wood then initiated the following legal proceedings, all related to the release from her employment:

- a) she complained to the Yukon Director of the Occupational Health and Safety Branch and the Workers' Compensation Health and Safety Board (the "Board") that her release on probation was a reprisal for raising safety concerns at work; the Board's decision not to prosecute the employer was upheld by the Appeal panel (February 2016);
- b) she sought judicial review of the Board's decision; it was struck on the basis that it was vexatious (May 2018);
- c) she commenced a civil action in this Court against the Department of Highways and Public Works seeking reinstatement of her position and damages; this was dismissed on the basis it disclosed no cause of action, was vexatious and an abuse of process, and the Court of Appeal of Yukon quashed her appeal on the basis it would be an abuse of the procedure of the court to allow it to proceed (May 2017);
- d) she commenced a petition for judicial review of her termination of employment, which was dismissed on consent (May 2018);

- e) she complained to the Yukon Human Rights Commission alleging discrimination by the Government of Yukon and seeking reinstatement to her position with the Department of Highways and Public Works; the Director stopped the investigation on the basis that the complaint about the dismissal during her probation was considered to be vexatious and the Commission confirmed the Director's findings of the vexatious nature of the proceeding and that the rest of the relief sought was out of time (May 2017); and
- f) she brought a judicial review to set aside the decision of the Human Rights Commission members and to overturn the Director's decision to stop the investigation (July 2018).

[4] The Government of Yukon filed an application on May 17, 2018, seeking a declaration under s. 7.1 of the *Supreme Court Act*, RSY 2002, c 211 (as amended by SY 2013, c 15, s 19) of vexatious proceedings, at the outset of the judicial review of the Human Rights Commission decision. In granting the application in a decision of July 20, 2018 (*Wood v Yukon (Government of)*, 2018 YKSC 34), the Supreme Court of Yukon examined the entire history before it, which included all of the legal proceedings noted in paragraph 3 above. As noted above, the Court in the July 20, 2018 decision declared Juanita Wood to have persistently instituted vexatious proceedings and conducted proceedings in a vexatious manner. She was prohibited from proceeding with the petition for judicial review before the Court at that time (July 2018) or from instituting any other proceeding on behalf of herself or another person in the Supreme Court of Yukon, except by leave of the Supreme Court of Yukon. The judge was satisfied that Juanita

Wood “brought all of the proceedings noted above to determine the same issue: the validity of her dismissal from the Department of Highways and Public Works” (para. 35). The Court further found that issue had been decided by courts of competent jurisdiction.

[5] The Government of Yukon brought an application before the Court of Appeal of Yukon seeking to prohibit Juanita Wood from instituting a proceeding in the Court of Appeal on behalf of herself or another person without leave of the Court, pursuant to s. 12.1 of the *Court of Appeal Act*, RSY 2002, c 47 (as amended by SY 2013, c 15, s 2). The Court of Appeal in *Wood v Yukon (Public Service Commission)*, 2019 YKCA 4, granted the Government of Yukon’s application. This application was brought by the Government of Yukon following the dismissal of appeals brought by Juanita Wood of two decisions of the Supreme Court of Yukon (*Wood v Yukon (Public Service Commission)*, 2018 YKCA 15 (“*Wood Appeal No. 1*”) and *Wood v Yukon (Occupational Health and Safety Branch)*, 2018 YKCA 16 (“*Wood Appeal No. 2*”)). *Wood Appeal No. 1* was an appeal of the July 20, 2018 Supreme Court of Yukon decision declaring Juanita Wood to be a vexatious litigant. The Court of Appeal order was made on the basis that they agreed she had persistently instituted proceedings and conducted proceedings in a vexatious manner. *Wood Appeal No. 2* was an appeal of the decision of *Wood v Yukon (Director of Occupational Health and Safety)*, 2018 YKSC 24, striking her petition for judicial review of the decision of the Board not to prosecute the employer after she raised safety concerns at work and had her employment terminated. The Court found the petition disclosed no cause of action, was vexatious and amounted to an abuse of process.

[6] In their 2019 decision, the Court of Appeal wrote that after reviewing the entire history of the proceedings, including the two appeals it had just dismissed, the requisite standard of persistently instituting vexatious proceedings was met. The Court stated:

[37] ... This includes bringing numerous proceedings to determine an issue that had already been decided, persistently bringing unsuccessful appeals and reviews before various tribunals and courts, instituting proceedings that were bound to fail, and seeking to re-litigate the same issues in different forms in subsequent proceedings while seeking superficially different remedies.

[7] The current application sought to be heard by Juanita Wood in this Court is a judicial review under the *Criminal Code* of an order issued by the Territorial Court of Yukon. There has been no finding by the Territorial Court of Yukon that Juanita Wood had persistently instituted vexatious proceedings. The background of the current application is as follows. Juanita Wood brought 11 separately sworn Informations containing a total of 59 counts against the Government of Yukon, the Yukon Worker's Compensation Health and Safety Board, and 11 of its employees and/or directors, respectively. The Attorney General of Canada, represented by the Public Prosecution Service of Canada entered a stay of proceedings on all of the sworn Informations except for two. The Territorial Court judge canvassed the reasons provided by the Crown for the stay of proceedings in some detail and concluded there was no basis for concern that prosecutorial discretion may have been improperly exercised. Indeed, the judge found at para. 20 that "[t]he decision was preceded by an extensive devotion of investigative and legal resources leaving no stone unturned". The judge had only to determine whether there was a sufficient basis for process to issue on either of the two

remaining Informations. In his decision declining to issue process, the Territorial Court judge stated that the allegations in the Informations related to Juanita Wood's:

[3] ... perceived mistreatment by the named entities and individuals and is connected to the termination of her probationary employment with the Government of Yukon Department of Highways and Public Works in the year 2014. She believes the safety concerns she raised were ignored or covered up, she was unfairly bypassed for promotions, her probation was wrongfully extended, and that ultimately, she was wrongfully dismissed. These matters have been the subject of extensive litigation by Ms. Wood in the civil arena, and also by way of her earlier attempts to bring prosecutions under the Yukon's health and safety legislation. She now resorts to criminal prosecution [*Wood (Re)*, 2022 YKTC 27 (unreported)].

[8] The Informations brought by Juanita Wood contain in count 1) an allegation that the Government of Yukon and an employee induced the commission of the offence of fabrication of evidence by soliciting a letter of complaint to be used in a judicial proceeding and intending that counselling bring about the commission of the offence, contrary to s. 137 of the Code; in count 2) an allegation that a public official committed a breach of trust by inducing the fabrication of evidence contrary to s. 122 of the Code; and in count 3) an allegation that the official committed a breach of trust by using government resources to procure fabricated evidence, contrary to s. 122 of the Code. All three of these counts are alleged to have occurred on or between December 16, 2014, and December 18 or 19, 2014.

[9] The Territorial Court of Yukon declined to issue process for these Informations after a hearing under s. 507.1 of the *Criminal Code* on the basis that there was no evidence "that could reasonably be interpreted as criminal fabrication of evidence,

misuse of public resources, breach of trust, or any attempt to obstruct justice”

(para. 37). The Territorial Court went on to note:

[38] Ms. Wood’s complaints can at best be regarded as disagreements over managerial decisions affecting her employment, that she interpreted in a different light, but which have in fact, as I understand it, nonetheless largely been addressed in prior civil proceedings, some of which have resulted in her already having been determined to be a vexatious litigant.

[10] The Territorial Court judge agreed with the Court of Appeal of Yukon when they wrote in *Wood Appeal No.1*:

[26] ... While she [Juanita Wood] may have used different vehicles, her destination was always the same: to determine the validity of the termination of her employment with the Department of Highways and Public Works. ...

[11] Juanita Wood in her submission to this Court urging acceptance of the filing of her application under s. 774, relies on the decision of the British Columbia Court of Appeal in *Holland v British Columbia (Attorney General)*, 2020 BCCA 304 (“*Holland*”). There, the Court held that an individual who had been declared a vexatious litigant in the Supreme Court of British Columbia and the Court of Appeal of British Columbia under the authority of provincial statutes, and not under the inherent jurisdiction of the courts, could bring an application for *certiorari* in a criminal matter, challenging the decision of Crown counsel to stay a private prosecution. The Court of Appeal held that the legislature did not intend to regulate criminal procedure with their vexatious litigant legislation and as a result the litigant could institute proceedings under the *Criminal Code*. Juanita Wood argues this case applies in her situation, as her current application has been instituted as a criminal matter under the *Criminal Code* and should not be subject to the vexatious proceedings findings in civil matters.

[12] There is no information in the *Holland* case about whether the underlying facts of the criminal matter were related to the civil matters which gave rise to the vexatious litigant determinations. Further, as noted by the court in *Felger (Re)*, 2020 BCPC 221, the Court of Appeal in *Holland* did not refer to the court's inherent jurisdiction to control its own process at common law.

[13] Courts have an inherent jurisdiction to prevent abuse of their process. Courts have a responsibility to conserve scarce judicial resources and to protect other parties from needless litigation expenditures. A litigant is not entitled to return to court over and over, using different mechanisms to achieve the same desired remedy. This is the essence of abuse of process and forms the basis for a finding of persistently instituting vexatious proceedings.

[14] The clearly stated conclusion of Territorial Court Judge Gill was that Juanita Wood is attempting now to litigate through the criminal justice system the same issue of her release from employment with the Department of Highways and Public Works during her probationary period. This is the same conclusion as the Supreme Court of Yukon and the Court of Appeal of Yukon found on seven occasions: (*Wood v Yukon (Public Service Commission)*, 2019 YKCA 4; *Wood v Yukon (Public Service Commission)*, 2018 YKCA 15; *Wood v Yukon (Government of)*, 2018 YKSC 34; *Wood v Yukon (Director of Occupational Health and Safety)*, 2018 YKSC 24 (aff'd 2018 YKCA 16); *Wood v Yukon (Occupational Health and Safety Branch)*, 2018 YKSC 29; and *Wood v Yukon (Highways and Public Works)*, 2016 YKSC 68 (aff'd 2017 YKCA 4)), all of which contributed to the determination of persistently instituted vexatious proceedings and conducting proceedings in a vexatious manner.

[15] This ongoing misuse of the litigation process by Juanita Wood, now in the criminal context, cannot be sanctioned. I have reviewed the history of the many proceedings initiated by Juanita Wood and dismissed by the courts or on consent, including this most recent one commenced in the criminal context. Given its basis in the same underlying facts as all of the other proceedings, I find that a pursuit of a judicial review in the Supreme Court of Yukon would be an abuse of process. In coming to this conclusion, I have considered all of the circumstances, including the earlier finding by the Supreme Court of Yukon, upheld by the Court of Appeal of Yukon, under s. 7.1 of the *Supreme Court Act*, as well as the obligation and inherent jurisdiction of this Court at common law to prevent abuse of its processes.

[16] For these reasons, I decline to grant leave to Juanita Wood to file her application under s. 774 of the *Criminal Code*.

DUNCAN C.J.