

ONTARIO
SUPERIOR COURT OF JUSTICE

BETWEEN:

HOWARD GALGANOV

Applicant

- and -

THE CORPORATION OF THE TOWNSHIP OF RUSSELL

Respondent

NOTICE OF MOTION

The Respondent will make a motion to a Judge, a date to be determined, at the Ottawa Courthouse, 161 Elgin Street, Ottawa, Ontario.

PROPOSED METHOD OF HEARING: The motion is to be heard

- in writing under subrule 37.12.1(1) because it is on consent, unopposed or without notice;
- in writing as an opposed motion under subrule 37.12.1(4);
- orally.

THE MOTION IS FOR:

1. An Order requiring the lawyer for the Applicants, personally, to pay the costs awarded to the Respondent in two applications heard and decided jointly in Court File No. 08-CV-41980 & 09-CV-41980 [**“Applications”**];

2. Costs of this motion on a substantial indemnity basis; and
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THE MOTION ARE:

1. In a single judgment released on August 20, 2010, the Honourable Justice Métivier of the Superior Court of Justice dismissed with costs the application of Mr. Galganov and the application of Mr. Brisson [**“Applicants”**] against the Respondent Corporation of the Township of Russell [**“Township of Russell”**].
2. Both Applicants are represented by the same counsel, Kenneth Bickley [**“Mr. Bickley”**], a solicitor with Barnes Sammon LLP at 200 Elgin Street, Suite 400, Ottawa, K2P 1L5.
3. While Mr. Galganov’s application was dismissed on the basis that he lacked standing, Mr. Brisson’s application was dismissed for failure to establish any of the arguments raised in his notice of application, including his allegation of a violation of his right to freedom of expression, of his rights under Section 15 of the *Charter*, and a breach of the *International Covenant on Civil and Political Rights*.
4. In preparation for and during the hearing, Mr. Bickley’s conduct was often highly inappropriate, clearly incompetent, and the cause of unnecessary costs, waste of time and delays. Some of these incidents are outlined below. When viewed collectively, Mr. Bickley’s conduct justifies the granting of an order for costs against him, personally, as the solicitor for the Applicants.

Mr. Bickley’s legal arguments were fundamentally flawed and devoid of merit

5. Shortly after the Township of Russell was served with Galganov’s Notice of Application, Mr. Bickley was served with a ten (10) page letter in which the Township advised him in tremendous detail that his client had no factual or legal basis to support the application, bringing numerous cases to his attention. In spite of being so informed, Mr. Bickley proceeded with bringing the groundless application on behalf of his clients.

6. The legal issues raised by Mr. Bickley concerned a number of unsound and inapt legal arguments, such as the *International Covenant on Civil and Political Rights* and the application of “custom” to language rights.

Mr. Bickley was careless and negligent

7. Mr. Bickley was continuously injudicious during the entire conduct of the application:
 - a. Mr. Bickley included a “draft” factum as part of the Galganov Application Record;
 - b. Mr. Bickley refused to accept correspondence from the Respondent’s counsel via email although it originated from the Trial coordinator’s office;
 - c. Mr. Bickley submitted answers to undertakings without a covering letter, in no discernable or logical order, and without identifying the documents allegedly answering the said undertakings;
 - d. Mr. Bickley requested that his own expert discuss specific caselaw and then proceeded to essentially dictate the contents of that section of his affidavit;
 - e. Twice during the hearing, Mr. Bickley omitted to bring his application materials;
 - f. Mr. Bickley advised the Honourable Justice Métivier that he thought that the parties had submitted a joint book of authorities, yet he had no involvement or input whatsoever in preparing the Respondent’s book of authorities, nor the Respondent’s compendium. As a result of this omission Mr. Bickley was not able to reference case law during his oral submissions;
 - g. During the hearing, Mr. Bickley put forward and failed to qualify as an expert his own client and Applicant, Mr. Galganov;
 - h. Mr. Bickley omitted to attach the proper document as an exhibit to the Affidavit of Dr. Conrad Winn as part of the Application Record filed on March 10, 2010.

Instead, the exhibit was replaced by some other document for which no reference was provided.

- i. Mr. Bickley clearly misconstrued Rule 39 of the *Rules of Civil Procedure* as he attempted to convert the application into a trial midway through the hearing by alleging that he was contesting the Respondent's expert evidence which, according to his interpretation of the *Rules of Civil Procedure*, allowed his clients to convert the application into a trial;
- j. Mr. Bickley unsuccessfully raised an objection regarding the timing of the standing argument raised by the Township of Russell and didn't even bother to make reference to any caselaw on point when raising said objection;
- k. Mr. Bickley raised a second objection during the hearing to allege that a non-prejudicial affidavit that was sworn by counsel did not comply with Rule 39(5). Although he knew that he would raise the said objection, he didn't rely upon any case law. Mr. Bickley never substantiated his objection at a later time although the court permitted him to do so. In anticipation for his arguments, the Respondent incurred costs to respond to the objection; and,
- l. The court ordered Mr. Bickley to produce a detailed Reply plan in advance of the last hearing date. Mr. Bickley requested and was granted more time to submit his reply plan. The Reply plan was very poorly drafted and was not followed during submissions.

Mr. Bickley's misconstrued the rules of evidence

8. The Notice of Application in the Galganov Application was served without any supporting affidavits. Mr. Bickley knew that he wanted to rely on the affidavit of Roger Bernard (hereinafter the "Bernard Affidavit"), as he referred to it in previous correspondence. The Bernard Affidavit was not entered through Mr. Bickley's supporting affidavits or reply affidavits. Rather, Mr. Bickley attempted to enter them on reply through his own witnesses after they had been cross-examined. He also tried to enter them into evidence through a request to admit.

9. In another case of misconduct regarding evidentiary rules, Mr. Bickley served a supplementary expert affidavit after the experts had been cross-examined on March 5, 2009, without seeking leave to do so.
10. In an attempt to embarrass Mayor Ken Hill, Mr. Bickley took the unreasonable position that Mr. Hill should be cross-examined at the hearing of the application although Mr. Bickley had been offered the opportunity to cross-examine Mr. Hill prior to the hearing.
11. Additionally, Mr. Bickley attempted to attack the credibility of the Respondent's expert witness Dr. Charles Castonguay by serving materials *after* he had been cross-examined. These materials had not been served before the cross-examination and thus had not been put to the witness.
12. Mr. Bickley improperly attempted to file a "Book of Articles". The allegedly relevant evidence was attempted to be entered in a fashion as to circumvent the Township's right to cross-examination the source of the evidence, and therefore test the reliability and the contents of the alleged evidence.

Clear misunderstanding of Rule 53

13. Mr. Bickley misconstrued Rule 53 of the *Rules of Civil Procedure* as applying to applications, thereby forcing the Respondent to file additional affidavits. Although being advised on several occasions by the solicitors for the Respondent that Rule 53 was not applicable in applications, Mr. Bickley insisted that Rule 53 did in fact apply and forced the Respondent to file additional expert reports.

Mr. Bickley's disparaging behaviour

14. Mr. Bickley addressed the court in an inappropriate a mocking fashion on more than one occasion.
15. Moreover, during his Reply, Mr. Bickley mocked the Franco-Ontarian community in an outrageous, unbecoming, and disrespectful fashion, by waving the Franco-Ontarian flag while trying to explain that Franco-Ontarians are not truly "French" but rather bilingual, and therefore not deserving of legal protections.

16. The Respondent pleads and relies on Rules 57.01 and 57.07 of the *Rules of Civil Procedure* and section 131 of the *Courts of Justice Act*.
17. Such further and other grounds as counsel may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE WILL BE USED AT THE HEARING OF THE MOTION:

1. All the materials on use for the Applications ;
2. The Judgment of the Honourable Justice Métivier, dated August 20, 2010;
3. The Affidavit of Marc Sauvé, to be sworn;
4. Such further and other documents as counsel may advise and this Honourable Court may permit.

Date: September 20, 2010

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Howard Galganov
Applicant

- and -

The Corporation of the Township of Russell
Respondent

Court File No.: 08-CV-41980

ONTARIO
SUPERIOR COURT OF JUSTICE

Proceeding commenced in the City of Ottawa

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