**COURT OF APPEAL OF ALBERTA**

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| COURT OF APPEAL FILE NUMBER: | **1803-0363AC** |
| TRIAL COURT FILE NUMBER: | **1603-18935** |
| REGISTRY OFFICE: | Edmonton |
| PLAINTIFF/APPLICANT: | DR.VILIAM MAKIS and VILIAM MAKIS PROFESSIONAL CORPORATION |
| STATUS ON APPEAL: | Appellant |
| DEFENDANT/RESPONDENT: | ALBERTA HEALTH SERVICES and COLLEGE OF PHYSICIANS AND SURGEONS OF ALBERTA |
| STATUS ON APPEAL: | Respondent |
| DOCUMENT: | **FACTUM** AND AUTHORITIES |

Registrar's Stamp
REGISTRAR FILED JUL 19 2019 Court of Appeal of Alberta

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Appeal from the Decision and Order of
The Honourable Mr. Justice T.D.Clackson
Dated the 3rd day of December, 2018
Filed the 3rd day of December, 2018

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**FACTUM OF THE APPELLANT**, AND AUTHORITIES

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## PART 1: STATEMENT OF FACTS

### *The Action*

1. Dr.Viliam Makis ("Dr.Makis" or the "Appellant") is a Nuclear Medicine Physician currently under contract with Alberta Health Services ("AHS"), which both parties signed in 2013 (the "AHS Contract").[1]
2. Dr.Makis ran a Cancer Therapy Program (called "Lutetium Clinical Trial") for AHS at Cross Cancer Institute ("CCI"), which was deliberately and unlawfully sabotaged and destroyed by Alberta NDP-appointed AHS Vice President (and AHS Chief Medical Officer) Dr.Francois Belanger ("Dr.Belanger") and Alberta NDP-appointed AHS CancerControl Medical Director Dr.Matthew Parliament ("Dr.Parliament") and their AHS and CPSA subordinates.
3. Dr.Makis filed 3 legal actions at Court of Queen's Bench against AHS and/or CPSA Executives: QB1603-18935, QB1803-01472 and QB1803-16582 regarding sabotage of his Lutetium Clinical Trial, medical practice, medical career, medical license and reputation.
4. QB1603-18935 claims against AHS and CPSA, *inter alia*: breach of Dr.Makis' AHS Contract, damages to Dr.Makis' medical practice, medical career and reputation, Breach of Public Trust by AHS Executives, and AHS' malfeasance in public office.[2]
5. QB1803-01472 is a Judicial Review of unlawful CPSA cover-ups of physical and verbal abuses, harassment, and career sabotage committed by AHS against Dr.Makis and his CCI colleagues, cover-ups that were conducted by CPSA Complaints Director Dr.Michael Caffaro ("Dr.Caffaro") and CPSA Complaints Review Committee members Dr.Randy Naiker and Dr.Brinda Balachandra, on behalf of Dr.Belanger and Dr.Parliament.[3]
6. QB1803-16582 claims against Dr.Parliament and his AHS subordinates, and against several University of Alberta Administrators: sabotage of Dr.Makis' academic appointments at the University of Alberta, and sabotage of Dr.Makis' research and academic medical career.[4]
7. All three of Dr.Makis' legal claims were proceeding in accordance with all *Alberta Rules of Court*, when AHS filed a fraudulent "vexatious litigant" application against Dr.Makis, in QB1603-18935, notwithstanding that Dr.Makis had never been before any Alberta Court.[5]

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[1] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A1, para 2; Exhibit A, p.A11-A14.
[2] Appellant's Extracts of Key Evidence, Affidavit of Dr.David Mador, p.A284, para 7; Exhibit B, A304-A326
[3] Appellant's Extracts of Key Evidence, Affidavit of Dr.Mador, p.A302,para 24; Exhibit F,A327-A330
[4] Appellant's Extracts of Key Evidence, Statement of Claim QB1803-16582, A331-A358
[5] AHS Application for "vexatious litigant", dated May 10, 2018 [Appeal Record at P1]

8. CPSA mimicked AHS and filed a similar "vexatious litigant" application against Dr.Makis.[6]
9. The present appeal is concerned with the entire decision and order which were granted to AHS and CPSA on December 3, 2018 by Honourable Justice T. Clackson.[7]

***Background of AHS and CPSA's sabotage of Dr.Makis' medical practice and medical career***

10. From 2013 to 2015, Dr.Makis ran the largest Lutetium Clinical Trial in North America (NCT01876771), and had about 250 Neuroendocrine Cancer Patients under his care. Dr.Makis received referrals from across Canada and his CCI Lutetium Clinical Trial was extremely successful, with over 80% of cancer patients improving or stabilizing with Lutetium Therapy. Shortly after election of Alberta NDP government, starting in about May 2015, Dr.Makis' Lutetium research, Lutetium Clinical Trial and medical practice came under vicious attacks by Dr.Belanger's direct subordinate Dr.Parliament, and Dr.Parliament's AHS subordinates Dr.Robert MacEwan ("Dr.R.MacEwan") and Quinn West (both of whom were AHS supervisors in Dr.Makis' CCI Department of Diagnostic Imaging). These attacks were directed at Dr.Makis' Lutetium research, Lutetium Clinical Trial, other Diagnostic Imaging research, as well as Dr.Makis' Lutetium research supervisor, Dr.Sandy McEwan ("Dr.S.McEwan"). These attacks took place during workplace meetings, and over email.[8]
11. In email exchanges dated May 12-13, 2015, August 19 and 23, 2015, Dr.Parliament, Dr.R.MacEwan, Quinn West and AHS Official Warren Henschel started discussing and plotting how they could get Dr.Makis fired from AHS and/or sabotage and destroy Dr.Makis' AHS Contract, both of which would also destroy Dr.Makis' Lutetium Clinical Trial.[9]
12. On August 23, 2015, by way of email, Dr.Parliament, Dr.R.MacEwan and Quinn West formalized their plan to get Dr.Makis fired and/or destroy Dr.Makis' AHS Contract by soliciting fraudulent complaints against Dr.Makis from Dr.Makis' Diagnostic Imaging colleagues, which would then be used as a pretext to get rid of Dr.Makis. Dr.Parliament, Dr.MacEwan and Quinn West did solicit complaints from Dr.Makis' CCI colleagues, including Diagnostic Imaging technologists Brittany Sammann and Joanne Snydmiller, both of whom refused to participate in Dr.Parliament and his AHS team's sabotage of Dr.Makis.[10]

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[6] CPSA Application for "vexatious litigant", dated Aug 31, 2018 [Appeal Record at P5]
[7] Reasons for Judgment of Honourable Justice T.Clackson, dated Dec 3, 2018 [Appeal Record at F1] and Order filed Dec.6, 2018 [Appeal Record at F42].
[8] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A3, para 19; Exhibit E, p.A15-A27.
[9] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A3, para 18,21;Exhibit G,p.A28-A32
[10] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A3,para 22,23;Exhibit H,p.A33-A48

13. Dr.Parliament, Dr.MacEwan and Quinn West continued to solicit complaints from Dr.Makis' CCI colleagues from August until December 2015, and held a number of secret, unauthorized meetings to plot Dr.Makis' termination (Dr.S.McEwan joined their conspiracy and their meetings in December 2015 to save his job). These meetings yielded 2 fraudulent complaints which Dr.Parliament used as a pretext to unlawfully remove Dr.Makis from CCI.[11]
14. Dr.Makis was then subjected to a fraudulent AHS Investigation authorized by Dr.Belanger, and unlawfully tampered with by Dr.Belanger's subordinates: Dr.Parliament, Dr.Christopher Sikora, Dr.David Mador, Jamie Rice and Sandra Plupek (Jamie Rice instructed AHS Investigators Peter Ratcliff and Melissa Kowalchuk to tamper with questioning and witnesses in a manner that would frame and damage Dr.Makis, Sandra Plupek tampered with the AHS Investigation Report by rewriting it and by fabricating and altering AHS witness testimony, AHS lawyers Jonathan Carlzon and Brent Windwick oversaw Dr.Makis' illegal sabotage, and Dr.Parliament, Dr.R.MacEwan, Quinn West and Dr.S.McEwan were handpicked to give false co-ordinated testimony against Dr.Makis to damage him in AHS Investigation), all of whom played key roles in breaching Dr.Makis' AHS Contract, damaging Dr.Makis' medical career and reputation, and preventing Dr.Makis from practicing medicine at CCI again. This fraudulent AHS Complaint Process was reported to Edmonton Police Service ("EPS") on May 17, 2018, which led to a criminal investigation by EPS Detective Kevin Schindeler Reg#2049 (EPS Criminal Investigation File No.18-132308, which remains open).[12]
15. Although Dr.Makis was exonerated when the AHS complainant recanted her testimony as being false (which she admitted to CPSA), AHS legal counsel Brent Windwick who was acting on behalf of Dr.Belanger, repeatedly refused to allow Dr.Makis to return to his CCI medical practice. In October 2016, Dr.Makis filed a $13.5 million legal claim QB1603-18935 against AHS and Dr.Belanger's AHS Team for breach of Dr.Makis' AHS Contract, damaging Dr.Makis' medical practice, medical career and medical reputation, Breach of Public Trust and malfeasance in public office. Dr.Makis also filed a number of non-judicial complaints, regarding sabotage of Dr.Makis' medical career by Dr.Belanger's AHS Team members. [13]

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[11] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A3-A4, para 23,26; Exhibit L, p.A49-A55.
[12] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A4-A5, para 27-30; p.A8, para 50; Exhibit M, p.A56-A124.
[13] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A5, para 30-34.

16. In May 2017, Dr.Belanger's Team members Dr.Parliament, Dr.S.McEwan and University of Alberta Dean of Medicine Dr.Richard Fedorak sabotaged Dr.Makis' University of Alberta appointments in Departments of Radiology and Oncology, and tampered with Dr.Makis' University of Alberta Identification Cards, Library Accounts and email account, which destroyed Dr.Makis' academic medical career, severely damaged Dr.Makis' Lutetium research, and which formed the basis for Dr.Makis' $22.2 million legal claim QB1803-16582, filed on August 20, 2018, at Court of Queen's Bench of Alberta.[14]
17. In or about June 2017, Dr.Makis' Lutetium Clinical Trial at CCI collapsed, enrollment of Alberta cancer patients ceased, and thousands of Alberta cancer patients lost access to life-saving Lutetium Cancer Treatments due to the malicious and unlawful actions of AHS Executives Dr.Belanger, Dr.Parliament and their AHS Team members. Dr.Makis was informed by a number of senior healthcare executives from British Columbia, including former BC Cancer Agency President and CEO Dr.Simon Sutcliffe, that the sabotage of Dr.Makis' Lutetium Clinical Trial was deliberate, politically motivated, and was pursued by Alberta NDP government officials and their AHS Executive appointees, on behalf of Prime Minister of Canada Justin Trudeau's Nuclear Medicine Medical Isotope Project at TRIUMF (located in Vancouver, British Columbia), called the "Institute for Advanced Medical Isotopes" (IAMI) (which received a $293 million investment from Justin Trudeau in the 2019 Federal Liberal Party Budget), and that Dr.Makis' sabotaged Theranostics Lutetium Clinical Trial would be copied at IAMI by BC Cancer Agency Vice President of Research Dr.Francois Benard, with a focus on prostate cancer treatment (targeted 177Lu-PSMA Therapy), and would also be copied in a private for-profit clinic in Surrey, BC, which would be established at a state-of-the-art healthcare facility called "Innovation Boulevard".
18. In June 2017, AHS Offered Dr.Makis $400,000 to settle QB1603-18935 and demanded that Dr.Makis give up his AHS Contract and hospital privileges at CCI. Dr.Makis refused.[15]
19. Within six hours of Dr.Makis' rejection of AHS' $400,000 settlement offer, Dr.Belanger's subordinates and CPSA Complaints Directors Dr.Caffaro and Dr.John Ritchie launched a CPSA Investigation against Dr.Makis, based on false allegations of an AHS employee and Lutetium Clinical Trial Research helper Ms.Marguerite Wieler and Dr.Belanger's AHS

[14] Appellant's Extracts of Key Evidence, Statement of Claim QB1803-16582, p.A331-A358
[15] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A6,para 39;Exhibit U, p.A125-A131.

subordinate Sandra Plupek, which effectively froze Dr.Makis' medical license, prevented Dr.Makis from getting a medical license outside of Alberta, and prevented Dr.Makis from finding a new job and earning an income for his family, all of which were done in order to undermine Dr.Makis' lawsuit QB1603-18935, and destroy Dr.Makis' medical career.[16]

20. Since CPSA Officials Dr.Caffaro and Dr.Ritchie involved themselves in helping AHS and Dr.Belanger sabotage and destroy Dr.Makis' medical career, Dr.Makis amended his AHS lawsuit QB1603-18935 to include CPSA as a defendant (filed on December 11, 2017), but as a result of being unlawfully blocked by AHS and CPSA from earning a medical income for his family, and as a result of AHS and CPSA breaching Dr.Makis' AHS Contract, Dr.Makis could not continue to finance a legal counsel, and became a self-represented litigant.[2]
21. In January 2018, Dr.Caffaro, Dr.Ritchie and their CPSA lawyer Craig Boyer (Shores Jardine LLP) unilaterally escalated the post-rejected-AHS settlement CPSA Complaint to a CPSA Hearing Tribunal, where Craig Boyer and CPSA Tribunal Chair Dr.Ralph Strother conspired to deprive Dr.Makis of every opportunity to provide testimony and physical evidence to the CPSA Tribunal that exonerated Dr.Makis and proved that Ms.Wieler had repeatedly lied under oath to the CPSA Tribunal about Dr.Makis. Craig Boyer also artificially inflated the CPSA Hearing Tribunal Costs from about $2000 to about $75,000, by adding three witnesses to testify against Dr.Makis who were CPSA employees (Dr.Caffaro, Dr.Ritchie, Marnie Heberling) who had nothing material to contribute to the Tribunal other than to increase the costs to Dr.Makis astronomically which CPSA then used to attack Dr.Makis and his family.[17]
22. In July 2018, AHS and CPSA used the post-rejected-AHS settlement CPSA Tribunal to threaten and extort Dr.Makis into giving up all his legal claims against AHS and CPSA. CPSA lawyers Craig Boyer and William Hembroff (Bennett Jones LLP) repeatedly threatened and extorted Dr.Makis, in that unless Dr.Makis gave up all his legal claims versus AHS, and also put in writing that these legal claims against Dr.Belanger, Dr.Parliament and their AHS Team were the result of a mental impairment such as depression, anxiety or stress (none of which Dr.Makis has, or has ever had), that Craig Boyer and Dr.Caffaro would ensure that Dr.Makis would never practice medicine again in Alberta or anywhere else. Craig Boyer and William Hembroff also informed Dr.Makis in writing that they would

[16] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A6,para 40;Exhibit V, p.A132-A140.
[17] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A6-A7, para 40-43.

"*punish your family by a hefty cost award on top of your inability to practice (medicine)*" with the artificially inflated CPSA Tribunal costs of ~$75,000 (which were single-handedly fabricated by Craig Boyer), but that these costs could be "significantly reduced" if Dr.Makis agreed to Dr.Caffaro's and Craig Boyer's extortion terms and gave up all his legal claims.[18]

23. Craig Boyer effectively admitted in a July 5, 2018 letter that he was threatening and extorting Dr.Makis and threatening to destroy Dr.Makis' ability to practice medicine, on behalf of his client Dr.Caffaro and on behalf of AHS Chief Medical Officer Dr.Francois Belanger.[19]
24. Dr.Makis rejected these CPSA threats and extortion attempts, and reported CPSA lawyer Craig Boyer and his unlawful tampering with the post-rejected-AHS settlement CPSA Tribunal, to the Law Society of Alberta.[20]
25. Dr.Makis also reported Craig Boyer's legal partner and CPSA lawyer William Hembroff, who also threatened and extorted Dr.Makis and his family, to the Law Society of Alberta.[21]
26. Following Dr.Makis' rejection of CPSA threats and extortion, CPSA Officials Dr.Caffaro and Craig Boyer carried out their threats against Dr.Makis and his family, on behalf of AHS Executives Dr.Belanger and Dr.Parliament, and used the post-rejected-AHS settlement CPSA Tribunal, and Ms.Wieler's false and fraudulent CPSA Tribunal testimony, as a pretext to cancel Dr.Makis' Alberta medical license in February 2019, and published the fraudulent CPSA Tribunal process in a heavily redacted format, publicly, in order to destroy Dr.Makis' professional medical reputation, and ensure Dr.Makis could not practice medicine again.
27. Ms.Wieler's false allegations against Dr.Makis, were stage-managed by Dr.Belanger's AHS subordinates Sandra Plupek and Dr.Caffaro - both of whom had also previously tampered with the fraudulent AHS Investigation that was used as a pretext to breach Dr.Makis' AHS Contract and prevent Dr.Makis from returning to his CCI medical practice. Both Sandra Plupek and Dr.Caffaro were present at the January 2018 CPSA Tribunal. For providing false testimony to CPSA Tribunal in January 2018 against Dr.Makis, that helped AHS and CPSA hold Dr.Makis' medical license hostage for 2 years (post Dr.Makis' refusal of AHS $400,000 offer), so Dr.Makis couldn't earn an income for his family, and that CPSA used as an excuse

[18] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A7, para 44-45.
[19] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A8,para 52;Exhibit W, p.A141-A147.
[20] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A7-A8,para 47, 52; Exhibit W, p.A148-A237.
[21] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A7-A8, para 46, 52; Exhibit W, p.A238-A279.

to cancel Dr.Makis' medical license, in May 2018 Ms.Wieler received a substantial bribe and reward at the University of Alberta, in the form of a promotion from post-doctoral student, to Chair and Professor in the Faculty of Rehabilitation Medicine at the University of Alberta, bypassing at least 10-15 years of required academic service to the University of Alberta.[22]

***Proceedings Below***

28. In QB1603-18935, Questioning for Discovery took place between June 2017 and March 2018, and Dr.Makis interviewed eight members of Dr.Belanger's AHS Team. However, between January 2018 and May 2018, AHS repeatedly refused Dr.Makis' requests to question Dr.Belanger for Discovery in QB1603-18935, or his subordinate Jamie Rice - who had tampered with the AHS Investigation that was used as a pretext to breach Dr.Makis' AHS Contract and prevent Dr.Makis from returning to work at CCI.[23]
29. Furthermore, on April 5, 2018, Dr.Makis filed a criminal complaint against Jamie Rice, for Breach of Public Trust and Jamie Rice's unlawful tampering with Dr.Makis' AHS Investigation on behalf of Dr.Belanger, to the Royal Canadian Mounted Police ("RCMP").[12]
30. It was precisely at this point in the QB1603-18935 Questioning for Discovery process, after Dr.Makis had repeatedly requested to question Dr.Belanger and Jamie Rice under oath, after AHS had repeatedly refused Dr.Makis' requests, and after Dr.Makis filed a criminal complaint on Jamie Rice and Dr.Belanger to the RCMP, that AHS brought forward an Application seeking from Court of Queen's Bench a declaration that Dr.Makis was a "vexatious litigant", notwithstanding that Dr.Makis had never been before any Alberta Court as of May 2018. AHS demanded that the Court place restrictions on Dr.Makis' Court activities as well as non-Court activities, but AHS also demanded of the RCMP:

    > that the RCMP destroy, and abstain from using any documents provided by the Respondents for investigative purposes where the documents were obtained through the litigation processes within this action.[24]

31. In August 2018, CPSA brought forward an Application almost identical to that of AHS.[25]
32. The grounds asserted by AHS and CPSA were that all of Dr.Makis' judicial and non-judicial proceedings were "vexatious" or "frivolous". It is Dr.Makis' position that AHS and CPSA's Applications were entirely fraudulent, their claims about Dr.Makis' judicial and non-judicial

[22] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, A7, para 42-44, 48.
[23] Appellant's Extracts of Key Evidence, Affidavit of Dr.Makis, p.A9-A10, para 66-75; Exhibit Y, p.A280-A282.
[24] AHS Application dated May 10, 2018, para 1(a), 1(c) [Appeal Record at P2]
[25] CPSA Application dated August 31, 2018 [Appeal Record at P5]

proceedings were all false and were deliberately misrepresented to the Court, the Applications were brought to Court for the improper purpose of deceiving the Court with the intent of damaging Dr.Makis' legal claims against AHS and CPSA, and were abuses of Court processes which wasted valuable Court time and resources.

33. AHS and CPSA's Applications were heard by Clackson T on October 23, 2018.

34. On December 3, 2018, Clackson T rendered a complicated judgement, declared Dr.Makis a "vexatious litigant" in regards to Dr.Makis' non-judicial proceedings exclusively (the "Decision"), and granted the defendants AHS and CPSA an Order ("Order") which placed some restrictions on Dr.Makis, but none of Dr.Makis' judicial proceedings were deemed "vexatious" and were, in fact, deemed by Clackson T to have "*some prospect of success*".[26]

**PART 2 – GROUNDS OF APPEAL**

35. The present appeal raises two key issues/grounds of appeal:

**Issue #1:** Did the chambers judge err in law by restricting the applicant's access to the Court of Queen's Bench and Provincial Court?

**Issue #2:** Did the chambers judge err in law by restricting the applicant's access to non-judicial bodies?

**PART 3 – STANDARD OF REVIEW**

36. Both grounds of appeal identified above involve solely questions of law. Because the appeal involves only questions of law, the standard of review for all questions on this appeal is correctness.[27]

**PART 4 – ARGUMENT**

***GROUND OF APPEAL #1: The Court erred in finding Dr.Makis to be a "vexatious litigant" and erred in restricting Dr.Makis' access to Court of Queen's Bench and Provincial Court.***

37. AHS' and CPSA's Applications to have Dr.Makis declared a "vexatious litigant" were demonstrably fraudulent, in their entirety. As of the date of the filing of AHS' "vexatious litigant" Application on May 10, 2018, Dr.Makis had never been before any of Alberta's Courts, had never initiated any judicial or non-judicial "vexatious proceeding" and had never engaged in "vexatious conduct" or "vexatious litigation" of any kind.

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[26] Reasons for Decision of Honourable Justice T.Clackson ("Clackson T") dated Dec.3, 2018 and Order dated Dec.6, 2018 [Appeal Record at F1-F41 for Decision; and F42-F48 for Order]

[27] *Housen v.Nikolaisen*, 2002 SCC 33 at paras 8-9 [Appellant's Book of Authorities, Tab 1]

38. It is Dr.Makis' position that AHS Vice President Dr.Belanger brought this fraudulent AHS Application to Court for the improper purposes of: 1.deceiving the Court into dismissing all of Dr.Makis' legal claims against AHS and CPSA, 2.forcing the Court to order the RCMP and EPS to destroy all incriminating documentation against Dr.Belanger and Jamie Rice, and 3. avoid being questioned for discovery under oath in QB1603-18935 by Dr.Makis.
39. On November 28, 2018, a few days before Clackson T issued his Decision, Dr.Belanger issued a public memorandum to all Edmonton physicians, where he effectively revealed why AHS and CPSA brought fraudulent "vexatious litigant" applications to Court against Dr.Makis - their intention was to deceive the Court into having all of Dr.Makis' legal claims "*dismissed by the courts*", as Dr.Belanger declared to thousands of Edmonton physicians in his publicly issued memo. Dr.Belanger made claims on behalf of both AHS and CPSA, although he holds no Administrative position at CPSA. On December 5, 2018 Dr.Belanger issued a second memorandum to all physicians in Alberta, proclaiming that the Court had found Dr.Makis to be a "vexatious litigant", however Dr.Belanger now abandoned his claim that the Court would dismiss all of Dr.Makis' legal actions, as the Court had not done so.[28]
40. To deceive the Court, AHS filed four Affidavits comprised entirely of false accusations against Dr.Makis of engaging in "vexatious conduct", or "indicia of vexatious litigation", in regards to non-judicial proceedings or Tribunals, the majority of which were nothing more than non-judicial letters from Dr.Makis to his healthcare colleagues. AHS falsely claimed:

    > The Respondents have made approximately 60 complaints about various individuals who are directly or indirectly involved in this action.[29]

41. AHS also deceived the Court about QB1803-01472, claiming in its May 10, 2018 Affidavit:

    > the Originating Application was adjourned by consent of the parties *sine die* and the decision has been set aside.[3]

    This statement is demonstrably false. QB1803-01472 was not "adjourned *sine die*", it was re-scheduled for a full day in Special Chambers for February 15, 2019, and the decision was never "set aside", QB1803-01472 was fully heard in Special Chambers of Court of Queen's Bench on February 15, 2019 and the Justice's decision in that claim is currently pending.[30]

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[28] *Memorandum of AHS Vice President Dr.Francois Belanger* [Appellant's Book of Authorities, Tab 2]
[29] AHS Application dated May 10, 2018 [Appeal Record at P3, para 2]
[30] Appellant's Extracts of Key Evidence, Civil Trial Scheduling QB1803-01472, p.A359

42. In regards to QB1603-16852, AHS failed or refused to file a statement of defense, opting instead to challenge certain portions of the Statement of Claim, in Court.[31]

***Chambers Judge did not find any of Dr.Makis' judicial proceedings to be "vexatious", nor that Dr.Makis engaged in any "vexatious conduct" in regards to his judicial proceedings.***

43. Chambers Judge Clackson T concluded that Dr.Makis is a "vexatious litigant":

> [86] I have found Dr.Makis to be a vexatious litigant.[32]

44. However, Clackson T did not find Dr.Makis to be a "vexatious litigant" in regards to any of Dr.Makis' judicial proceedings (the three legal claims), about which Clackson T stated:

> [78] it appears that the wrongful termination action may have some prospect of success (QB1603-18935), as does the Judicial Review of the CPSA dismissal of his complaint against Dr.R.Macwan (QB1803-01472). The action number 1803 16582 Statement of claim, while arising from the same circumstances as relied upon in the wrongful termination action, involves individuals alleged to have defamed and conspired to interfere with Dr.Makis' employment and damage his reputation. While an application is pending to strike 1803 16582, I am unable on this record, to judge its merit.[33]

45. Clackson T's reasons in paragraphs [68] to [78] of his Decision that he relied upon to justify labeling Dr.Makis a "vexatious litigant", did not contain a single finding of "vexatious conduct", "vexatious proceeding" or "indicium of vexatious litigation" in regards to any of Dr.Makis' judicial or in-Court proceedings (QB1603-18935, 1803-01472, 1803-16582).[33]

46. Court of Appeal Honourable Justice Costigan P made this same observation in granting Dr.Makis permission to appeal Clackson T's Decision and Order, observing:

> Prior to the order, the applicant had commenced three actions in the Court of Queen's Bench arising from ongoing employment-related disputes with his colleagues, Alberta Health Services and the College of Physicians and Surgeons. The applicant's conduct which the chambers judge relied upon to justify the order arose <u>outside of the court system</u>.[34]

47. In paragraph 70 of his Decision, Clackson T indicated that "*establishing one ground or criteria is sufficient*" for determination of vexatiousness.[35]

48. Clackson T is only partially correct. In ***Calgary (City) v.Manyluk*** 2012 ABQB 178, Justice Jones quoted the "vexatious" criteria in *Judicature Act* 2.1 section 23(2), at para [6]:[36]

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[31] Reasons of Clackson T dated Dec.3, 2018 [Appeal Record at F37, para 78]
[32] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F38, para 86]
[33] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F34-F37, para 68-78]
[34] Reasons of Justice Costigan P, dated Jan 23, 2019, emphasis added [Appeal Record at F61, at para 2]
[35] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F34, para 70]
[36] *Calgary (city) v Manyluk*, 2012 ABQB 178, at para 6 [Appellant's Book of Authorities, Tab 3]

> Definitions
> 23(2) For the purposes of this Part, instituting vexatious proceedings or conducting a proceeding in a vexatious manner includes, without limitation, any one or more of the following: [37]

49. However, in paragraph [52] of ***Calgary (City) v. Manyluk***, Justice Jones also made it clear what the requirements for the application of Part 2.1 of the *Judicature Act*, are:

> **B. Requirements for the Application of Part 2.1**
> In *Prince Edward Island v Ayangma*, [1999] PEIJ No.30 (SCTD), the Court considered the application of s.61 of the Supreme Court Act, RSPEI 1988, c.S-10, which provided as follows:
> 61.(1) Where a judge of the Supreme Court is satisfied, on application, that a person has persistently and without reasonable grounds
> (a) instituted vexatious proceedings in any court; or
> (b) conducted a proceeding in any court in a vexatious manner,
> The judge may order that
> (c) no further proceeding be instituted by the person in any court; or
> (d) a proceeding previously instituted by the person in any court not be continued, except by leave of a judge of the Supreme Court.[38]

Justice Clackson T's reasoning in paragraph [70] of his Decision, that "*establishing one ground or criteria is sufficient*" for determination of vexatiousness, is taken from the *Judicature Act* Part 2.1, but it requires that this one "ground or criteria" must be in a judicial proceeding or in-Court proceeding, as Justice Jones explicitly stated in ***Calgary (City) v.Manyluk***, at paragraph 52: "*instituted vexatious proceedings in any court; or conducted a proceeding in any court in a vexatious manner*". Clackson then listed 11 "indicia of vexatious litigation" in paragraph [65] of his Decision, relying on ***Chutskoff Estate v Bonora***, 2014 ABQB 389, and applied several of these "indicia" to Dr.Makis' non-judicial proceedings. This is an error in law. As Justice Michalyshyn made clear in paragraph [93] of his decision in ***Chutskoff Estate v Bonora***, these 11 "indicia of vexatious litigation" only apply to judicial or in-Court proceedings, as Clackson T was fully aware, because Clackson T quoted Justice Michalyshyn on this very point:

> [93] Any of these indicia are a basis to classify a legal action as vexatious.[39]

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[37] *Judicature Act,* R.S.A. 2000, c.J-2, s.23(2) [Appellant's Book of Authorities, Tab 4]
[38] *Calgary (city) v Manyluk*, supra, at para 52, emphasis added [Appellant's Book of Authorities, Tab 3]
[39] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F32, para 65]

There is no legal precedent in Canadian Case Law, where one or more of these 11 "indicia of vexatious litigation" were applied to non-judicial proceedings exclusively, in order to designate a party a "vexatious litigant"; Clackson T also did not provide any legal precedent.

50. All of Clackson T's reasons to justify labeling Dr.Makis a "vexatious litigant" (as documented in Clackson T's Decision in paragraphs [68] to [78]) improperly applied the definitions of "indicium of vexatious litigation" to Dr.Makis' non-judicial proceedings exclusively, and failed Justice Jones' "Requirements for the Application of Part 2.1 (of the *Judicature Act*)" in paragraph 52 of ***Calgary (City) v.Manyluk***. This is an error in law. As explained below, Dr.Makis cannot be found to be a "vexatious litigant" if there was no finding of "vexatious conduct" and no finding of even one "indicium of vexatious litigation" in any of Dr.Makis' judicial or in-Court proceedings, if there was no finding of Dr.Makis having ever conducted a "vexatious proceeding" in any Court, and if there was no finding that Dr.Makis ever abused Court processes or Court resources, no matter how Clackson T interpreted Dr.Makis' non-judicial proceedings.

51. In Paragraph [71] of his Decision, Clackson T applied a "vexatious litigation" criterion of "unsuccessful appeals" to Dr.Makis' non-judicial proceedings exclusively. This is an error in law, as these "unsuccessful appeals" must be in judicial or in-Court proceedings and cannot be applied to non-judicial proceedings. In Paragraph [71], Clackson T did not mention any of Dr.Makis' judicial or in-Court proceedings, and made it clear his legal reasoning regarding "unsuccessful appeals" only applied to Dr.Makis' non-judicial proceedings:

> All the appeals made by Dr.Makis relate to appeals in non-judicial proceedings.[40]

52. In Paragraph [72] of his Decision, Clackson T did not make any finding of Dr.Makis pursuing a "vexatious proceeding" in Court, nor did Clackson T establish a single ground or criteria of "vexatious litigation" in regards to any of Dr.Makis' judicial proceedings.[41]

53. In Paragraph [73] of his Decision, Clackson T stated:

> [73] he wants "the politicians" to recognize that the health system and processes for dealing with physicians is broken and needs to be fixed. I note that litigating for a political rather than personal purpose is another indicium of abusive litigation.[42]

However, the Transcript of the Court Proceedings (at page 50) proves that in stating "*litigating for a political rather than personal purpose*", Clackson T was referring to

[40] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F34, para 71]
[41] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F34, para 72]
[42] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F34, para 73]

Dr.Makis' non-judicial proceedings (letters or correspondence that were copied to leader of UCP party and the Premier of Alberta), not any of Dr.Makis' three judicial proceedings:

> **The Court**: Okay. Why – if that is what you are after, what was the purpose of including the leader of the UCP party and the Premier of this province in your correspondence?
> **Dr.Makis**: Because the Alberta – the AHS complaint system is non-functional; it's broken. It does not – AHS does not abide by its legal obligations to its healthcare staff and healthcare workers.[43]

Clackson T was referring to Dr.Makis' non-judicial proceedings exclusively, which in this case were not even non-judicial proceedings but were private letters or emails addressed to the leader of UCP party Jason Kenney, and the Premier of Alberta about AHS' violations of the law. Clackson T reasoned that Dr.Makis' letters to the leader of UCP party and Premier of Alberta constituted "*litigating for a political purpose*" and could be designated as "*another indicium of abusive litigation*" and relied on ***Van Sluytman v Muskoka (District Municipality)***, 2018 ONCA 32 at paras 23-24. This is an error in law. In ***Van Sluytman v Muskoka***, Mr.Van Sluytman filed eight Appeals before the Court of Appeal for Ontario which were deemed to be "vexatious proceedings", and while in para [23] the Court noted:

> [23] in most of his actions, the appellant sought the acknowledgement and correction of perceived government shortcomings,

all eight Appeals filed by Mr.Van Sluytman, which were deemed "vexatious proceedings instituted by a "vexatious litigant", were judicial or in-Court proceedings, not non-judicial proceedings (or non-judicial private correspondence, as in Dr.Makis' case):

> [1] The appellant, Rory Adrian Van Sluytman, a self-represented litigant, brings eight appeals before this court, each involving one or more of the respondents.
> [2] Seven appeals concern orders made by Wood J. and Di luca J. of the Superior Court of Justice.
> [24] We agree with the application judge that these are hallmarks of vexatious proceedings, and a vexatious litigant.[44]

It was an error in law for Clackson T in paragraph [73] of his Decision to rely on ***Van Sluytman v Muskoka*** to justify labeling Dr.Makis' non-judicial letters as "*another indicium of abusive litigation*". Furthermore, In Paragraph [73], Clackson T did not make any finding of Dr.Makis pursuing a "vexatious proceeding" in Court or establish a single ground or criteria of "vexatious conduct" in regards to any of Dr.Makis' judicial proceedings.[42]

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[43] [Appellant's Court Proceedings Transcript, at p.50, lines 19-27]
[44] *Van Sluytman v Muskoka*, 2018 ONCA 32, at para 6 [Appellant's Book of Authorities, Tab 5]

54. In Paragraph [74] of his Decision, Clackson T improperly applied an "indicium of vexatious litigation" of "unsubstantiated allegations" to Dr.Makis' non-judicial proceedings - complaints Dr.Makis filed against AHS and CPSA Executives. This is an error in law, as this definition only applies to judicial or in-Court proceedings. However, in Paragraph [74], Clackson T did not make any finding of Dr.Makis pursuing a "vexatious proceeding" in Court, nor establish a single ground or criteria of "vexatious conduct" in regards to any of Dr.Makis' judicial proceedings.[45]

55. In Paragraph [75] of his Decision, Clackson T improperly applied an "indicium of vexatious litigation" of "scandalous and inflammatory language in pleadings or before the Court" to Dr.Makis' non-judicial proceeding (a private email Dr.Makis authored on December 18, 2017 that was copied to Alberta Premier Rachel Notley and UCP Leader Jason Kenney). This is an error in law. In Paragraph [75] of his Decision, Clackson T did not make any finding of Dr.Makis pursuing a "vexatious proceeding" in Court, nor establish a single ground or criteria of "vexatious conduct" in regards to any of Dr.Makis' judicial proceedings.[46] Clackson T made it clear he was relying on ***Chutskoff Estate v Bonora*** paragraph 92, which he referenced in paragraph 65 of his Decision:

> [65] 10. Scandalous or inflammatory language in pleadings or before the court: ***Wilson v Canada (Revenue)***, 2006 FC 1535 (CanLII) at para 31, 305 FTR 250; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at para 205, 543 AR 132; ***Onischuk v Alberta***, at paras 14, 35;[39]

However, as already shown, Justice Michalyshyn made it clear that each of these 11 "indicia of vexatious litigation" applied specifically to judicial or in-Court proceedings. It was an error in law for Clackson T to improperly rely on these cases cited by Justice Michalyshyn in ***Chutskoff Estate v Bonora*** (all of which involved judicial proceedings (pleadings) or in-Court proceedings, and not non-judicial proceedings) to justify labeling Dr.Makis' non-judicial proceedings as "vexatious".

56. In Paragraph [76] of his Decision, Clackson T continued to apply the same "indicium of vexatious litigation" of "scandalous and inflammatory language" to a number of additional non-judicial private email messages of Dr.Makis. This is an error in law. Clackson T relied on the same flawed reasoning as he did in paragraph [75] of his Decision. Furthermore, Clackson T made the following comment:

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[45] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F35, para 74]
[46] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F35-F36, para 75]

> Additionally, this email message further buttresses the arguments made by the Applicants that Dr.Makis makes unsubstantiated allegations and engages in unsuccessful appeals.[47]

This is also an error in law. While "unsubstantiated allegations" and "unsuccessful appeals" are two of the 11 "indicia of vexatious litigation" listed in ***Chutskoff Estate v Bonora*** (at paragraph 92), Clackson T once again improperly applied these two "indicia" to Dr.Makis' non-judicial private emails. In paragraph [76], Clackson T did not make any finding of Dr.Makis pursuing a "vexatious proceeding" in Court, nor establish a single ground or criteria of "vexatious conduct" in regards to any of Dr.Makis' judicial proceedings.[47]

57. AHS' May 10, 2018 Application does contain two vague allegations of "vexatious litigation" relating to Dr.Makis' judicial proceedings, in regards to "scandalous language":

> 7.(k) using scandalous, inflammatory, improper and prolix language in pleadings
> 7.(l) conducting or asking to conduct prolix and improper questioning of the Applicant's witnesses.[48]

However, AHS did not elaborate on these vague allegations. AHS did not provide any specific details as to which pleadings AHS referred to and in which of Dr.Makis' three legal actions these alleged "scandalous pleadings" were located, nor did AHS provide any specific details as to which witnesses in QB1603-18935 were alleged to have been subjected to "*prolix and improper questioning*" by Dr.Makis (none were). Furthermore, Clackson T did not address either of these vague AHS allegations in his entire Decision.[49]

58. In Paragraph [77] of his Decision, Clackson T stated:

> Another important aspect of Dr.Makis' conduct that indicates he is an abusive litigant is that his proceedings are "escalating" [50]

While Clackson T did not specify which proceedings were "*escalating*", Clackson T did not specifically refer to any of Dr.Makis' judicial proceedings QB1603-18935, QB1803-01472 or QB1803-16582 which Clackson described in paragraph [78] of his Decision as having "*some prospect of success*". Accordingly in paragraph [77], Clackson T was referring exclusively to Dr.Makis' non-judicial proceedings, and this is supported in paragraphs [19] to [21] of Clackson's Decision, where he listed 106 of these "non-judicial proceedings" of Dr.Makis in paragraph [19], and in paragraphs [20] and [21] where he indicated that in his opinion these 106 "non-judicial proceedings" were escalating:

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[47] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F36, para 76]
[48] AHS Application dated May 10, 2018 [Appeal Record at P4, para 7(k), 7l)]
[49] Reasons of Clackson T dated Dec.3, 2018 [Appeal Record at F1-F41]
[50] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F36, para 77]

> [20]Some complaints were made relative to multiple individuals. However, the inescapable conclusion is that Dr.Makis has flooded every person and agency he could think of with paper. He has voiced his concerns far and wide and his reach continues to expand, even into the political arena.
> [21]Since hearing this Application, I have been copied by Dr.Makis with a number of documents as he continues to pursue new avenues to complain.[51]

The documents Clackson T was referring to when he stated "*as he continues to pursue new avenues to complain*" was a November 1, 2018 letter Dr.Makis sent to Clackson T, regarding threats and extortion committed by AHS and CPSA Officials against Dr.Makis, his family and his medical license shortly after the October 23, 2018 Special Chambers Court hearing of AHS' Application [52], which were subsequently reported to EPS Detective Kevin Schindeler with a formal criminal complaint dated Nov.8, 2018, which detailed violations of section 346 (extortion) and section 465 (conspiracy to commit extortion) of the *Criminal Code*, by CPSA Officials (Dr.Caffaro, Dr.Ritchie, Dr.Strother, Mr.Boyer, Mr.Hembroff)[53] on behalf of AHS Vice President Dr.Francois Belanger and AHS Executive Dr.Matthew Parliament:

> Detective Schindeler,
> Re:Edmonton Police Service Criminal Investigation File #18-132308 – Breach of Public Trust by senior AHS Officials: Jamie Rice, Dr.Matthew Parliament, Dr.Francois Belanger, et al. ("Belanger Team")
> Dr.Viliam Makis and Emilia Makis of Edmonton, AB, hereby report criminal offenses committed by the following individuals (multiple violations of s.346 of the *Criminal Code* - threats and extortion, and or violations of s.465 of the *Criminal Code* – conspiracy to commit extortion):
> Dr.Michael Caffaro (CPSA Complaints Director), resident of Edmonton, s.346, s.465;
> Dr.John D. Ritchie (CPSA Associate Complaints Director) , resident of Edmonton, s.465;
> Mr.Craig Boyer (CPSA & Dr.Caffaro legal counsel), resident of Calgary, s.346, s.465;
> Mr.William Hembroff (CMPA & CPSA legal counsel), resident of Edmonton, s.346, s.465;
> Dr.Ralph Strother (CPSA Official), resident of Calgary, s.346, s.465.
> INCIDENTS:
> #1 – June 12, 2017 – Caffaro, Ritchie launched a fraudulent CPSA Investigation, threatened Dr.Makis, s.465;
> #2 – Oct.16, 2017 – Caffaro, Ritchie, Boyer initiated CPSA Hearing, threatened Dr.Makis, s.465;
> #3 – Jan.15-16, 2018 – Caffaro, Ritchie, Boyer attacked & threatened Dr.Makis at CPSA Hearing, s.465;
> #4 – Jun.5, 2018 – Strother initiated extortion of Dr.& Mrs.Makis in Hearing Decision, s.346, s.465;

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[51] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F9-F21, para 19,20,21]
[52] Appellant's Extracts of Key Evidence, Letter to Clackson T Nov.1, 2018, p.A360-A362
[53] *Criminal Code*, R.S.C. 1985, c.C-46, s.346, s.465 [Appellant's Book of Authorities, Tab 6]

> #5 – Jul.5, 2018 – Caffaro, Boyer threatened and extorted Dr.& Mrs.Makis, s.346, s.465;
> #6 – Jul.10-18, 2018 – Caffaro, Boyer, Hembroff threatened and extorted Dr.& Mrs.Makis, s.346, s.465;
> #7 – Oct.29-30, 2018 – Caffaro, Strother threatened and extorted Dr.& Mrs.Makis, s.346, s.465.
> On Sep.10, 2018, Dr.Makis informed EPS Detective Schindeler that Dr.&Mrs.Makis were recently threatened and extorted by Boyer and Hembroff on behalf of senior AHS & CPSA Officials. The threats and extortion were recorded in EPS Criminal Investigation ***File #18-132308***. On Oct.23, 2018, the threats and extortion by Boyer/Hembroff were reported to Justice Clackson at Court of Queen's Bench of Alberta *QB1603-18935*.[54]

59. In Paragraph [77] of his Decision, Clackson T once again relied on ***Chutskoff v Bonora***, since "escalating proceedings" is one of the 11 "indicia of vexatious litigation". This is an error in law, as "escalating proceedings" is specific to judicial proceedings or in-Court proceedings (as are all 11 "indicia"), and cannot be applied to Dr.Makis' non-judicial proceedings. Furthermore, in ***Chutskoff v Bonora***, Justice Michalyshyn declared Dr.Chutskoff a "vexatious litigant" based on escalating judicial proceedings:

> [132]I have surveyed in some detail Dr.Chutskoff's litigation history. Justice Miller has provided additional relevant details in his Enforcement Action judgment. There is no question that Dr.Chutskoff persistently engages in vexatious litigation. It is time for that to end.
> [152] The RMRF Action is struck out entirely as vexatious litigation. I order that Dr.Chutskoff is a vexatious litigant.[55]

60. AHS' May 10, 2018 Application contains another vague allegation of "vexatious litigation" relating specifically to Dr.Makis' judicial proceeding QB1803-01472 (a Judicial Review):

> [5] The Respondent Dr.Viliam Makis has in fact commenced other Court proceedings which relate to some of the matters at issue in this action. On January 18, 2018, Dr.Viliam Makis filed an Originating Application for Judicial Review for Court of Queen's Action Number 180301472, naming the CPSA Complaint Review Committee ("CRC") as the Defendant.[56]

Although AHS only implied that QB1803-01472 may be a "vexatious proceeding", Clackson T found nothing improper or "vexatious" about QB1803-01472, and described it in paragraph [78] of his decision as:

> [78] may have some prospect of success, as does the Judicial Review of the CPSA dismissal of his complaint against Dr.R.Macwan (QB1803-01472). [57]

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[54] Appellant's Extracts of Key Evidence, EPS Criminal Complaint vs CPSA Nov.8, 2018, p.A363-A391
[55] *Chutskoff v Bonora*, 2014 ABQB 389, at para 132, 152 [Appellant's Book of Authorities, Tab 7]
[56] AHS Application dated May 10, 2018 [Appeal Record at P3, para 5]
[57] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F37, para 78]

61. A thorough review of Clackson T's reasons for declaring Dr.Makis to be a "vexatious litigant", as contained in paragraphs [68] to [78] of his Decision, as discussed above, unequivocally proves that Clackson T did not find any of Dr.Makis' judicial proceedings to be "vexatious" and that Clackson T did not find a single ground or criteria of "vexatious conduct" or a single "indicium of vexatious litigation" in regards to Dr.Makis' judicial proceedings or in-Court proceedings. Furthermore, Clackson T also did not make a single finding that Dr.Makis ever abused Court processes or ever wasted Court resources. All the reasons Clackson provided to justify labeling Dr.Makis a "vexatious litigant" involved Dr.Makis' non-judicial proceedings (and non-judicial private letters and emails) exclusively.
62. This is an error in law. Dr.Makis cannot be found to be a "vexatious litigant" solely on the basis of non-judicial proceedings that Dr.Makis was involved in.
63. First, there is no legal precedent in Canadian Case Law for a party to be declared a "vexatious litigant" on the basis of perceived "vexatious conduct" in non-judicial proceedings exclusively (in the absence of any finding of "vexatious conduct", or "indicium of vexatious litigation" or "vexatious proceeding" in a judicial or in-Court proceeding).
64. Second, the definitions: "vexatious conduct", "vexatious proceeding", "indicia of vexatious litigation" or "vexatious litigant" all have well established legal precedent which was summarized by Clackson T in paragraphs [64]-[67] of his Decision. In fact, Clackson T cited ***Chutskoff Estate v Bonora*** as the primary case he relied upon for his decision:

> [65] In ***Chutskoff Estate v Bonora***, Michalyshyn, J comprehensively identified the characteristics of vexatious litigation and, by extension, litigants. I am content to adopt his conclusions on the features, or "indicia" of abusive litigation, commencing at paragraph 92. [58]

However, in ***Chutskoff Estate v Bonora***, Justice Michalyshyn, after providing a summary of features of vexatious litigation, made it clear that these features are used to classify a legal action as vexatious, not non-judicial proceedings or emails as "vexatious":

> [93] Any of these indicia are a basis to classify a <u>legal action as vexatious</u>. [59]

It was an error in law for Clackson T to apply these "indicia of vexatious litigation" to Dr.Makis' non-judicial proceedings and non-judicial letters and emails.

65. Clackson T carelessly used and, in fact, repeatedly misused the legal language in regards to "vexatious" conduct and proceedings, which impacted his Decision. In ***Calgary (City) v***

[58] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F28-33, para 64-67]
[59] Reasons of Clackson T dated Dec 3, 2018, [Appeal Record at F32, para 65, emphasis added]

***Manyluk***, Justice Jones spent considerable time addressing the importance of the proper use of "vexatious" language, why these are not meaningless words, and why they should not be thrown around carelessly and subjectively, for example to describe non-judicial proceedings:

> [53] The comments of Jenkins J. at para.12 are helpful in understanding how to proceed with a determination of what constitutes vexatious conduct:
> It is a fundamental rule of legislative interpretation that meaning is to be given to all language included in the statute. It is presumed that the legislature avoids superfluous or meaningless words.
> It is noted there that in many of the reported decisions, legal proceedings have been held to be vexatious because they were instituted without any reasonable ground, and as a result those proceedings were found to constitute an abuse of the process of the court. An example of such proceedings is the bringing of one or more actions to determine an issue which has already been determined by a court. In any event, whether an action is vexatious is a matter to be determined by objective rather than subjective standards. [60]

66. Furthermore, in ***Calgary (City) v Manyluk*** Justice Jones clearly explained why language and definitions of the word "vexatious" cannot be applied to non-judicial proceedings:

> [54]In *Jamieson v. Denman* 2004 ABQB 593, 365 AR 201, Watson J. (as he then was) discussed the concept of vexatiousness in a pre-Part 2.1 context. He noted as follows at paras. 126-129:
> I consider the word "vexatious" to carry with it a normative concept as well as a legal one. It seems to me that a party can be said to have acted in a vexatious manner, not merely that they acted in a manner which might be characterized as mean-spirited or nasty, but also that in fact the nastiness conveyed itself through to the legal process itself. In other words, that the legal process was being misused. [61]

Clackson T did not make a single finding or determination that Dr.Makis ever misused "the legal process" (judicial or in-Court proceedings) or that Dr.Makis ever abused Court processes or wasted Court resources. Whatever Clackson T may have thought of Dr.Makis' non-judicial proceedings, it is unequivocal that "vexatious" language and "vexatious" legal definitions cannot be applied to Dr.Makis' non-judicial proceedings and accordingly, a "vexatious litigant" finding cannot be made, in regards to Dr.Makis.

67. In paragraph [66] of his Decision, Clackson T indicated that he also relied on ***Knutson (Re)***, for "more of these indicia" of vexatious litigation:

> [66] Subsequent court decisions have also identified more of these indicia: reviewed in ***Knutson (Re)***, 2018 ABQB 858, at para 37. [62]

68. This is an error in law. In ***Knutson (Re)***, Justice Thomas identified 8 additional "indicia of vexatious litigation", summarized in paragraph [37] of his decision, all of which involve

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[60] *Calgary (city) v Manyluk*, supra, at para 53, emphasis added [Appellant's Book of Authorities, Tab 3]
[61] *Calgary (city) v Manyluk*, supra, at para 54, emphasis added [Appellant's Book of Authorities, Tab 3]
[62] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F32, para 66]

either judicial proceedings or in-Court proceedings.[63] None of these can be applied to Dr.Makis' non-judicial proceedings and it was an error in law for Clackson T to rely on ***Knutson (Re)***. As already explained above, when Clackson T mentioned that he felt Dr.Makis was "*litigating for a political purpose*", which is one of the 8 additional "indicia of vexatious litigation" in ***Knutson (Re)*** , Clackson T was applying this specific indicium to Dr.Makis' non-judicial proceedings exclusively (Dr.Makis' letters to Alberta Premier Rachel Notley and UCP leader Jason Kenney). Whether it is the 11 "indicia of vexatious litigation" in ***Chutskoff Estate v Bonora*** or 8 additional "indicia of vexatious litigation" in ***Knutson (Re)***, all 19 of these "indicia of vexatious litigation" apply specifically to judicial proceedings and in-Court proceedings and cannot be applied carelessly and subjectively to non-judicial proceedings, as Clackson T did for Dr.Makis, for which there is no legal precedent.

69. In Paragraph [67] of his Decision, Clackson T indicated that he also relied on ***Lee v Canada (Attorney General)***, 2018 ABQB 40, paras 246-249, "when considering whether to order court access restrictions, a judge may refer to evidence outside the proceeding being considered".

> 2.(b) non-judicial proceedings (***Bishop v Bishop***, 2011 ONCA 2011 (CanLII) at para 9; ***Thompson v International Union of Operating Engineers Local No.995***, at paras 24-25; ***Canada Post Corp v Varma***, 2000 CanLII 15754 (FC), 2000 CanLII 15743 at para 23, 192 FTR 278 (FC); ***West Vancouver School District No 45 v Callow***, 2014 ONSC 2547 (CanLII) at para 39; [64]

In Paragraph [69] of his Decision, Clackson T stated:

> [69] I reject Dr.Makis' argument that when I evaluate whether he is a vexatious litigant I am only permitted to consider his in-court activities. That is clearly not correct. In ***Thompson v International Union of Operating Engineers Local No 995***, the Alberta Court of Appeal explicitly concluded that conduct in non-court bodies and tribunals is relevant to evaluate whether court access restrictions are warranted. [65]

This is an error in law. In each of these four cases Clackson cited where "non-judicial proceedings" were considered by a judge "*when considering whether to order court access restrictions*", there was an absolute requirement that at least one ground or criteria of "vexatious conduct" or finding of "vexatious litigation" occurred in a judicial proceeding or in Court. None of these cases are applicable to Dr.Makis' case, where Clackson T made the finding that Dr.Makis is a "vexatious litigant" based on non-judicial proceedings exclusively.

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[63] *Knutson (Re)*, 2018 ABQB 858, at para 37 [Appellant's Book of Authorities, Tab 8]
[64] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F32-F33, para 67]
[65] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F34, para 69]

70. In ***Thompson v International Union of Operating Engineers Local No.995***, Justice Nielsen was unequivocal, in designating Mr.Thompson as a "vexatious litigant" on the basis of Mr.Thompson's judicial proceedings (irrespective of other non-judicial proceedings):

> [61] I conclude that Mr.Thompson's actions in the litigation, as outlined above, have been improper and abusive uses of the Court process, have caused much delay during the pre-trial process, have consumed considerable resources, and have detracted from the true issues before the Court. Further, it is reasonable to anticipate that Mr.Thompson will continue to proceed in a vexatious manner unless the Court imposes controls over his activities through a vexatious litigant order. Therefore, I find that the record supports a declaration to the effect that Mr.Thompson is a vexatious litigant. [66]

It is an error in law for Clackson T to rely on ***Thompson v International Union of Operating Engineers Local No.995*** in determining that Dr.Makis' non-judicial proceedings alone would be sufficient to declare Dr.Makis a "vexatious litigant", when Justice Nielsen unequivocally cited Mr.Thompson's judicial proceedings and in-Court activities and abuses of Court processes to make a "vexatious litigant" finding against Mr.Thompson.

71. In ***Canada Post Corp v Varma***, another case that Clackson T relied on, Justice Dawson made it clear that Mr.Varma was determined to be a "vexatious litigant" in judicial proceedings and in Court proceedings (irrespective of his non-judicial proceedings):

> [32]The evidence before the Court establishes that in the proceedings brought by Mr.Varma in this Court, he has attempted to re-litigate issues. Frivolous appeals and requests for reconsideration have been instituted.
> [34] Mr.Varma has been declared a vexatious litigant in Ontario and is the subject of an order under Rule 51.1 of the Rules of the *Supreme Court of Canada*. [67]

It is an error in law for Clackson T to rely on this case, which had findings of extensive "vexatious conduct" in judicial and in-Court proceedings, which had no similarity or application to Dr.Makis' case.

72. In ***West Vancouver School District No.45 v Callow,*** another case that Clackson T relied on, Justice McKinnon also made it unequivocally clear that Mr.Callow was deemed to be a "vexatious litigant" in judicial proceedings and in Court proceedings (irrespective of his non-judicial proceedings) which were extensive and are summarized in paragraph [40] of Justice McKinnon's Decision. Furthermore, Mr.Callow had already been determined a "vexatious

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[66] *Thompson v International Union of Operating Engineers Local No.995*, 2017 ABQB 210 [Appellant's Book of Authorities, Tab 9]
[67] *Canada Post Corp v Varma*, 2000 CanLII 15754 (FC) [Appellant's Book of Authorities, Tab 10]

litigant" in Supreme Court of British Columbia based on judicial proceedings.[68] It is an error in law for Clackson T to rely on this case, which had findings of extensive "vexatious conduct" in judicial and in-Court proceedings, which had no similarity to Dr.Makis' case.

73. In ***Lee v Canada (Attorney General)***, another case that Clackson T relied on, Justice Shelley summarized Mr.Lee's judicial proceedings and in-Court activities in paragraphs [250] to [269] that gave rise to her finding that Mr.Lee is a "vexatious litigant" (irrespective of non-judicial proceedings).[69] It is an error in law for Clackson T to rely on this case, which had findings of extensive "vexatious conduct" in judicial and in-Court proceedings, and which had no similarity or application to Dr.Makis' case.

***Clackson T did not find that Dr.Makis abused Court processes or resources, but predicts that Dr.Makis might in the future?***

74. It is unequivocal that Clackson T did not make any finding in his entire Decision that Dr.Makis ever abused Court processes or Court resources, and Clackson T could not make any such finding, given that prior to AHS' fraudulent May 10, 2018 "vexatious litigant" application, Dr.Makis had never been before any Alberta Court. The record is clear that it was the defendants AHS and CPSA who were abusing and wasting Court processes and Court resources in pursuing fraudulent "vexatious litigant" Applications for improper and bad faith purposes, as publicly admitted by AHS Vice President Dr.Francois Belanger (in a November 28, 2018 memorandum) to be an attempt to deceive the Court into having all three of Dr.Makis' legal claims "dismissed by the Courts". Clackson T stated in paragraph [80]:

> [80] having regard to all of his behaviours, and the existing actions pending in this Court, it is reasonable to conclude that Dr.Makis <u>may be minded to turn to Court</u> to continue the campaign. Prohibiting him from doing so without the Court's leave is justified. He is a vexatious litigant. His metastatic pattern of complaints, lawsuits, and appeals <u>predicts expanding abuse of the Courts and their processes</u>.[70]

This is an error in law. Clackson T did not make any finding that Dr.Makis was a "vexatious litigant" in regards to any of Dr.Makis' three judicial proceedings, did not make any finding that any of Dr.Makis' judicial proceedings were "vexatious" and did not make any finding that Dr.Makis ever abused the Courts. Accordingly there was no basis (legal or otherwise), for Clackson T to have declared in paragraph [80] that Dr.Makis "*may be minded to turn to*

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[68] *West Vancouver School District No.45 v Callow*, 2014 ONSC 2547 (CanLII) [Appellant's Book of Authorities, Tab 11]
[69] *Lee v Canada (Attorney General)*, 2018 ABQB 40 (CanLII) [Appellant's Book of Authorities, Tab 12]
[70] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F32, para 80, emphasis added]

*Court*" or that Dr.Makis would "*expand abuse of the Courts and their processes*" where none had occurred before. This is more than an error in law. This is abuse of discretion. This legal reasoning was unreasonable, unjust, and violated the principles of natural justice.

75. Moreover, Clackson T relied on this unreasonable and unjust reasoning to justify imposing restrictions on Dr.Makis to Courts and non-Court Tribunals:

> [87] It is my obligation to protect those who have and those who may continue to have and those who have not yet suffered, but may suffer from Dr.Makis' abuse of the non-court processes. The record could hardly be clearer that Dr.Makis' actions in relation to his dispute with AHS are expanding to involve new agencies, actors, complaints and appeals. It is almost certain that will continue, unless the Court acts. No one else can. I therefore conclude that this Court should intervene broadly, and impose restrictions both in relation to courts and non-court tribunals, including hitherto uninvolved tribunals.[71]

It is also an error in law, abuse of discretion, unreasonable and unjust for Clackson T to suggest that non-Court processes might be abused by Dr.Makis in the future, where no such abuses had ever occurred, and this conclusion also violated the principles of natural justice.

76. Clackson T found Dr.Makis to be a "vexatious litigant" solely on the basis of non-judicial proceedings. As discussed above, this is an error in law. Dr.Makis cannot be found to be a "vexatious litigant" on the basis of Dr.Makis' non-judicial proceedings exclusively. Since Dr.Makis cannot be found to be a "vexatious litigant", Dr.Makis cannot then be subjected to any "vexatious litigant" type restrictions to Courts and or non-Court Tribunals, that Clackson T imposed on Dr.Makis in paragraphs [78] to [90] of his Decision, and in his Order.[72]

***Dr.Makis' non-judicial proceedings were not "vexatious" even if the legal term was misused and misapplied by AHS, CPSA and Chambers Judge***

77. All of Dr.Makis' non-judicial proceedings that were brought before Clackson T by AHS and CPSA, were falsely and fraudulently labeled by AHS and CPSA as "vexatious". AHS and CPSA deliberately deceived the Court of Queen's Bench by misusing and misapplying the legal definitions of "vexatious conduct" and "vexatious litigation", which cannot be applied to Dr.Makis' non-judicial proceedings, as already discussed.

78. Despite the improper legal use of these terms by AHS and CPSA, none of Dr.Makis' non-judicial proceedings were actually "vexatious" or "frivolous" in nature or content.

79. Clackson T summarized a total of 106 "non-judicial proceedings" brought by AHS to Court, in paragraph [19] of his Decision, however, even a cursory review shows that the vast

[71] Reasons of Clackson T dated Dec 3, 2018 [Appeal Record at F38, para 87]
[72] Reasons of Clackson T dated Dec.3, 2018 [Appeal Record at F37-F39, para 78-90; F42-F48]

majority of these are not "non-judicial proceedings or Tribunals" but are nothing more than letters or emails to Dr.Makis' colleagues that did not involve legal counsels or judges in any of Dr.Makis' judicial proceedings and did not involve any in-Court proceedings.[73]

80. In addition to the misuse and misapplication of the word "vexatious" by Clackson T, it was also abuse of discretion for Clackson T to label any of these non-judicial proceedings and non-judicial emails as "vexatious" and to accuse Dr.Makis of "vexatious conduct" in authoring these, or filing these to the proper authorities. Clackson T did not conduct a proper review of any of these "106 non-judicial proceedings", which is particularly evident in paragraphs [68] to [78] of Clackson T's Decision.[74]
81. An excellent example of this is paragraph [75] of his Decision, where Clackson T quoted an entire letter authored by Dr.Makis and claimed it has "scandalous and inflammatory language", however Clackson T failed to identify a single passage, sentence or even a word that he deemed to be "scandalous" or "inflammatory", and this letter is entirely factual and did not use any "scandalous" or "inflammatory" language.[75]
82. It is the Appellant's position, that in addition to misusing and misapplying the "indicia of vexatious litigation" to Dr.Makis' non-judicial proceedings, Clackson T also committed a palpable and overriding error by misapprehending Dr.Makis' non-judicial proceedings as "vexatious" or "frivolous" (when none of them were) after Clackson T had failed to conduct any proper review of any of Dr.Makis' alleged 106 "non-judicial proceedings".

***GROUND OF APPEAL #2: The Court erred in finding Dr.Makis to be a "vexatious litigant" and erred in restricting Dr.Makis' access to non-judicial bodies.***

83. Clackson T's Decision to restrict Dr.Makis' access to non-judicial bodies, by ignoring the *Judicature Act* and by improperly invoking the "Court's Inherent Jurisdiction" also had no legal precedent in Canadian Case Law, had no legal basis, and is an error in law.
84. This decision has been thoroughly analyzed, criticized and repudiated by University of Calgary Law Professor Jonnette Watson Hamilton, who published a 6-page analysis of Clackson T's Decision to restrict Dr.Makis' access to non-judicial bodies, titled: "*Court of Queen's Bench Requires Vexatious Litigant to Seek Court's Permission Before Accessing*

[73] Reasons of Clackson T dated Dec.3, 2018 [Appeal Record, at F9-F21, para 19]
[74] Reasons of Clackson T dated Dec.3, 2018 [Appeal Record, at F35-F37, para 68-78]
[75] Reasons of Clackson T dated Dec.3, 2018 [Appeal Record, at F35-F36, para 75]

*Any Non-Judicial Body*" , on the University of Calgary Faculty of Law Blog and website - ABlawg.ca, on December 21, 2018, which is reproduced in its entirety below:

> Case Commented On: *Makis v Alberta Health Services*, 2018 ABQB 976
>
> In many written decisions rendered over the past two years, some judges of the Court of Queen's Bench of Alberta have been rather disdainful of the vexatious litigant procedures added to the *Judicature Act*, RSA 2000, c J-2 in 2007, referring to them, for example, as "obsolete and inferior" (*Gagnon v Shoppers Drug Mart*, 2018 ABQB 888 at para 14). Although the *Judicature Act* procedures continue to be used in rare cases (e.g. *HRMT v SNS*, 2018 ABQB 843 at para 102), the Court usually makes it clear that it prefers its own two-step "modern" process – introduced in *Hok v Alberta*, 2016 ABQB 651 – which they justify as an exercise of a superior court's inherent jurisdiction. The use of their inherent jurisdiction is said to provide "a more robust, functional, and efficient response to control of problematic litigants" (*Templanza v Ford*, 2018 ABQB 168 at para 103; *Hill v Bundon*, 2018 ABQB 506 at para 53). The *Judicature Act* procedure requires "persistent" bad behavior by a litigant before that litigant's access to the courts can be restricted (s 23(2)), usually by requiring the litigant to obtain the court's permission before starting a new court action. The Court of Queen's Bench does not want to wait for persistent vexatious conduct (*Templanza* at para 101; *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548 at paras 49-50). The legislated procedure also requires notice to the Minister of Justice and Solicitor General (s 23.1(1)), who has a right to appear and be heard in person (s. 23.1(3)), a requirement that suggests how seriously our elected representatives saw restrictions on court access when they added the vexatious litigant procedures to the *Act* in 2007. The court-fashioned process does not usually require notice to anyone except the person about to be found to be a vexatious litigant, and it has become a written-submissions-only process – no one has the right to appear and be heard in person. The usual restrictions on court access are now characterized as a "very modest imposition" (*Knutson (Re)*, 2018 ABQB 858 at para 42). As this brief summary suggests, the changes made to this area of the law over the past two years have been fairly dramatic. But the Court of Queens' Bench has now pushed the envelope, extending their inherent jurisdiction even further. In *Makis v Alberta Health Services,* their inherent jurisdiction is used to control access by a litigant found to be vexatious to non-judicial bodies, i.e. administrative tribunals and other statutory decision-makers.
>
> Administrative law scholars and practitioners might very well be looking at least a little askance at this point. But it is true. The order issued in this case requires Dr. Makis to get the permission of the Court of Queens' Bench before he can commence, attempt to commence, or continue any complaint, investigation, proceeding or appeal "with any non-judicial body" if that complaint is related to matters alleged in any of the three actions that were pending before the Court (at para 89). Those actions include Dr. Makis' wrongful employment termination action, a judicial review of a decision of the College of Physicians and Surgeons of Alberta (CPSA) on Dr. Makis' complaints about another physician, and a third, broader action by Dr. Makis against several physicians, their professional corporations and the University of Alberta based on conspiracy to undermine his professional career, breach of contract, negligence and misfeasance in public office (at para 3). The first two of these actions are described by Justice Clackson as "having some prospect of success" (at para 78). The order is limited as to the subject

matter of new proceedings, but not as to the forum – *any non-judicial body* is within the order's scope (paras 89-90). If requesting the leave of the Court to commence a proceeding related to any of the proscribed issues before a non-judicial body, notice must be given to the Defendants in this action – Alberta Health Services (AHS) and the CPSA – and to any individual named in the proceeding for which leave is sought (at para 89). The court costs of this application awarded to AHS and CPSA must also be paid before permission can be sought (at para 88). The same need for permission applies to beginning appeals or proceedings before the Court of Queen's Bench or the Provincial Court (at para 89).

Justice Clackson acknowledged that restricting Dr. Makis' non-court activities was an "unusual step" (at paras 4, 34). He also acknowledged that it would be a "new" step for the court (at para 35).

The applicants, AHS and CPSA, sought a court order to "manage" Dr. Makis' access to the courts and a number of tribunals and professional organizations (at paras 1, 22). They did not ask the court to limit Dr. Makis' ongoing Queen's Bench actions, but they did ask the court to stop his ongoing extra-judicial activities (at para 27). Those said to need protection from Dr. Makis' extrajudicial activities included not only AHS and the CPSA, but also the Edmonton Police Service, RCMP, AHS Ethics and Compliance Office, Alberta Human Rights Office, Alberta Public Interest Commissioner, Minister of Health, University of Alberta, Office of the Information and Privacy Commissioner, and any other body which Dr. Makis might contact in the future (at para 82).

The type of relief sought by AHS and the CPSA and their views on the source of the court's power to award that type of relief are not that clear. Justice Clackson noted that ordinarily someone seeking relief from unfair behavior would seek injunctive relief (at para 58). Later, however, he stated that the application did not clearly state that AHS and CPSA sought to enjoin Dr. Makis, although "that is one way to characterize what is being sought" (at para 84). He seems to absolve the parties of the need to actually seek an injunction for themselves and others, under the rules of law that apply to injunctive relief, because "where the court finds that someone has acted vexatiously and is likely to continue to do so, surely protecting those who may plausibly be abused should follow as a matter of course without the need for separate applications" (at para 58). Justice Clarkson concluded that "in effect" the applicants were arguing that once a litigant was found to be vexatious "they need not individually seeking an injunction nor provide undertakings as to damages" because "vexatiousness justifies access restrictions for all future actions of the vexatious litigant…[that] relate to the subjects that underpin the vexatious behaviors" (at para 85). Dispensing with the need to apply for injunctive relief is justified on the basis of "avoiding costs, formality and multiple applications" – all goals attributed to the "culture shift" heralded by *Hryniak v. Mauldin*, 2014 SCC 7. Apparently, AHS and CPSA argued that it was within the court's inherent jurisdiction to bar Dr. Makis' access to entities other than the Alberta courts (at para 34). In assessing this argument, Justice Clackson reviewed the case law about the scope and extent of a superior court's inherent jurisdiction. It seems to have been accepted in Alberta since the *Hok* decision in 2016 that superior courts have inherent jurisdiction to control not only the court action and processes before them, but also court actions and processes that might be brought in the future (at paras 37-45).

I am not going to rehash that point, except to suggest that more care be taken with the justifications for extending the court's self-policed powers. For example, Justice Clackson relied upon the two usually-relied-upon English cases to say that the UK Court of Appeal had concluded "on the basis of historical research, that UK courts have always had an authority to use misconduct in one matter as a basis to conclude that court access restrictions may be imposed on other and future litigation" (at para 41). Those two cases are *Ebert v Birch*, [1999] EWCA Civ 3043, [1999] 3 WLR 670 (UKCA) and *Bhamjee v Forsdick* (No 2), [2003] EWCA Civ 1113 (UKCA). In deciding whether a court could prohibit new proceedings without leave and proceedings in other courts, Lord Woolf in *Ebert v Birch* looked at an incomplete list of vexatious litigant orders maintained by Court Services (at 678G WLR). He noted there were at least six orders which restrained new proceedings, all made between 1880 and 1894. He cautioned that there was nothing to suggest that the question of the extent of the inherent jurisdiction of the court had been argued in any of those cases (at 679A). Due to the lack of full argument, Lord Woolf indicated that he did not regard the historical research as conclusive (at 679F). This does not seem to support Justice Clackson's assertion that the UK Court of Appeal concluded "on the basis of historical research, that UK courts have always had an authority" to impose access restrictions on future litigation. Lord Woolf indicated he preferred to approach the issue on the basis of principle (at 679F).

The main issue in this case – the "unusual" and "new" issue – should have been the extension of that inherent jurisdiction courts to non-judicial bodies. Justice Clackson described this issue as whether "a superior court of inherent jurisdiction has the authority to respond to any justiciable issue, provided that authority has not been allocated by legislation to a different body" (at para 36). He does discuss a superior court's inherent jurisdiction to respond to any justiciable issue, but he does not canvass the authority allocated to the AHS or the CPSA, or to the Edmonton Police Service, the Minister of Health, or any of the other non-judicial bodies for whom the AHS and CPSA sought the court's protection. He does note that the Ontario government has, through legislation, provided some of its statutory decision-makers with the power to make vexatious litigant orders that require prior permission for commencing future proceedings (at paras 48-49), and that there is no equivalent authority granted by the legislature to Alberta tribunals (at para 50). The "gap" is seen as a reason for the court to act (at para 50). Justice Clackson does not say what legislation was examined, but perhaps the *Administrative Procedures and Jurisdiction Ac*t, RSA 2000, c A-3, was what was being referred to here. Or perhaps all primary and subordinate legislation applicable to all of the non-judicial bodies in Alberta – every decision-maker to which the order applied – was examined and found lacking.

On the main issue of the extension of the court's inherent jurisdiction from courts to non-judicial bodies, Justice Clackson makes a number of points, all in short order and without much elaboration. He begins by stating that the "intrinsic power" that he relied upon is the power of a superior court of inherent jurisdiction that exercises "general jurisdiction over all matters of a civil and criminal nature" (at para 46). The basic idea was that, where there is a right, there must be a court which can enforce that right and provide a remedy (at paras 46-47). Exactly what right requires a remedy in this context, or whose right it is, was not stated.

Justice Clackson also relied upon a number of precedents. For example, he relied upon (at para 53) *Hok*'s description of the Quebec Court of Appeal's decision in *Production Pixcom inc v Fabrikant*, 2005 QCCA 703 (at paras 22-23) as stating that a court's inherent jurisdiction "extends to provide superior courts the authority to shelter tribunals and other bodies that are unable to control vexatious litigants" (at para 18 in *Hok*). However, there is no discussion in *Hok* or by Justice Clackson about the Quebec Court of Appeals' "in any case" reliance on article 46 of the *Code of Civil Procedure*, CQLR c C-25. Does that legislative context matter? Additionally, nothing is made of the way the Court of Appeal stated its conclusion (at para 23), which was to say that "for other courts or tribunals which are not so empowered, the Superior Court may *enjoin* a vexatious litigant from introducing proceedings …. In such case one can speak of *an injunctive remedy* …". (at para 23, emphasis added).
Justice Clarkson also mentioned (at para 54) a decision of the Prince Edward Court of Appeal: *Ayangma v Canada Health Infoway*, 2017 PECA 13 (at para 62-63) as identifying this broader authority for superior courts. However, that Court of Appeal determined that a ban on commencing new proceedings in the provincial Human Rights Commission was not required (at para 65). As a result, that Court of Appeal merely cited *Production Pixcom inc v Fabrikant* and *Nursing and Midwifery Council v Harrold,* [2015] EWHC 2254 (QB)for extending restraints to tribunal proceedings (at para 62), without discussing them at all. To use the latter case, the role of Rule 3.11 of the *Civil Procedure Rules* 1998/3132 would have to be disentangled from the inherent jurisdiction points. Rule 3.11 introduced a civil restraint order regime that put the inherent jurisdiction powers of the High Court to prevent abuse of its process on a statutory basis.

None of the cases cited by Justice Clackson are binding. Whether any of them are persuasive depends upon whether their reasoning, in their legislative context, is persuasive in the Alberta context. No Alberta vexatious litigant case has yet made this type of reasoned argument to say that they are.

The next rationales advanced for extending the court's inherent jurisdiction (at paras 57-60) are the points about "no need to apply for an injunction" that I have already mentioned. As well, we find quotations from *Canada v Olumide*, 2017 FCA 42 (at paras 17-20) about the misconduct of vexatious litigants who "squander … community property" and "gobble up scarce resources."

Justice Clackson next mentions, as a justification for extending the court's inherent jurisdiction, that the substantive effect of restricting access without leave is "very limited" (at para 55). He does not consider whether the impact of requiring an application to a court for leave to commence proceedings in a non-judicial body may be greater than when leave is sought to commence proceedings in the same court. He mentions instead (at para 56) that "while access to the courts is a fundamental right, there is no commensurate right of access to the various bodies" that Dr. Makis' had accessed (such as, presumably, the RCMP, the Alberta Human Rights Office, the Alberta Public Interest Commissioner, the Office of the Information and Privacy Commissioner, etc).

Justice Clackson's next rationale for not requiring AHS or CPSA to apply for injunctive relief was that to require abused persons or bodies to do so "could itself be a tool of abuse in the hands of the vexatious litigant" (at para 61). Here Justice Clackson asks us to imagine "a vexatious unrepresented litigant" that launches "all kinds of

spurious claims just to force his victims to the expense and *public humiliation* of seeking relief" (at para 61, emphasis added). Why asking the court for an injunction involves "public humiliation" is not specified.

Justice Clackson's final reason is based on what he identifies as the "sound policy" of managing vexatious litigants' access to tribunals even when one cannot identify which tribunals require protection (at para 62). He implores us: "Surely, if harm can be prevented at a reasonable cost, it behooves the court to do so" (at para 62). He saw it as "my obligation to protect those who have and those who may continue to have and those who have not yet suffered, but may suffer from Dr. Makis' abuse of the non-court processes" (at para 87).

These various rationales are each advanced very briefly, and sometimes only for their rhetorical impact. There is no in-depth reasoning about whether and why an Alberta superior court should extend its inherent jurisdiction to control access to non-judicial bodies.

The issue in this case deserves better. It effectively makes administrative tribunals accountable to the Court of Queen's Bench for who and what those tribunals will hear. My administrative law colleagues confirm that this is "odd" because non-judicial bodies are delegates of the legislature and take their directions from that branch of government, normally by way of statutes and regulations prescribing their authority. The order here will have the tribunals looking to the Court for direction on what matters and who they hear, rather than to the legislature. This seems wrong in principle. While judicial review does or at least can impose accountability on administrative tribunals, that accountability is usually imposed *ex post facto*, i.e., after the tribunal has acted. The ability of an administrative tribunal to decide what matters and which cases to hear – to be master of its own procedure – will vary with the empowering statute, but Justice Clackson's order appears to ignore any such statutory powers. His order also lacks a basis in a statute (as there is no such jurisdiction over non-judicial bodies in the *Judicature Act*; see *Calgary (City) v Manyluk*, 2012 ABQB 178 at para 88), procedural fairness, or some constitutional ground.

As Lord Woolf said in *Eberts v Birch* (at 680D), when it comes to a major question about the extension of the superior court's authority, there is something to be said for "waiting for intervention either in the form of primary legislation or in the form of rules of court".

*I would like to acknowledge the input of my colleagues Shaun Fluker, Nigel Bankes, Martin Olszynski, and Howie Kislowicz, while at the same time absolving them of any responsibility for any errors.*[76]

85. In conclusion, there is no legal basis for Clackson T to have extended the "Court's inherent jurisdiction" to restrict Dr.Makis' access to non-judicial bodies and Tribunals. Clackson T also provided no justification to take the legal system in this new direction.

86. It is the Appellant's position that the "vexatious litigant" Applications brought by AHS and CPSA were reprehensible abuses of Alberta Court processes and resources, and Clackson T's

[76] *"Court of Queen's Bench Requires Vexatious Litigant to Seek Court's Permission Before Accessing Any Non-Judicial Body"*, Professor Jonnette Watson Hamilton, University of Calgary Faculty of Law Blog Ablawg.ca, published on December 21, 2018 [Appellant's Book of Authorites, Tab 13]

Decision only served to embolden corrupt healthcare executives at AHS and CPSA, to not only continue abusing Alberta healthcare staff and misuse Alberta patient care funds, but also to continue abusing Alberta's Courts, whenever someone stands up to their unlawful conduct.

87. What is at stake for the Court of Appeal to consider, is not only the restrictions put on one physician whose career, medical practice and Cancer Therapy Program were destroyed by corrupt AHS Executives (led by Dr.Francois Belanger), who had the backing of the Alberta NDP government to do so; these restrictions I can live with. What is truly at stake, is the integrity of the Court of Queen's Bench, which has been severely damaged by the actions of AHS. Clackson T's Decision opened Alberta Courts to unparalleled abuses, by those with the resources to destroy their victims. The miscarriage of justice that occurred in this case, will repeat and propagate exponentially in the future, where Alberta Courts will come to serve and protect abusers and violators of the law, unless the Court of Appeal acts to stop it.

**PART 5 – RELIEF SOUGHT**

88. The Appellant respectfully requests that this Honourable Court:

    a. Set aside Clackson T's declaration that Dr.Makis is a "vexatious litigant";
    b. Set aside Clackson T's Order that placed restrictions on Dr.Makis' judicial and non-judicial activities;
    c. Award the Appellant's costs both at Court of Queen's Bench, and Court of Appeal.
    d. Issue a declaration that AHS and CPSA abused Court processes and Court Resources in pursuing "vexatious litigant" Applications they knew to be improper;
    e. Aggravated, punitive or exemplary damages that this Honourable Court deems just for the bad faith, malicious, high-handed, egregious and reprehensible conduct of the defendants AHS and CPSA;
    f. Such further and other relief as this Honourable Court may deem just and appropriate, having regard to all of the circumstances.

All of which is respectfully submitted this _____ day of July, 2019.

_____

**Dr.Viliam Makis MD, FRCPC**

ESTIMATED TIME FOR ARGUMENT: 45 minutes

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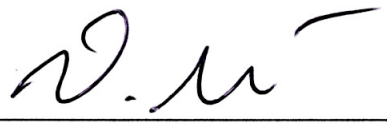
All of which is respectfully submitted this 19TH day of July, 2019.



**Dr.Viliam Makis MD, FRCPC**

ESTIMATED TIME FOR ARGUMENT: 45 minutes

# TABLE OF AUTHORITIES

**Paul Housen** *Appellant*

*v.*

**Rural Municipality of Shellbrook No. 493** *Respondent*

**INDEXED AS: HOUSEN *v.* NIKOLAISEN**

**Neutral citation: 2002 SCC 33.**

File No.: 27826.

2001: October 2; 2002: March 28.

Present: McLachlin C.J. and L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour and LeBel JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR SASKATCHEWAN

*Torts — Motor vehicles — Highways — Negligence — Liability of rural municipality for failing to post warning signs on local access road — Passenger sustaining injuries in motor vehicle accident on rural road — Trial judge apportioning part of liability to rural municipality — Whether Court of Appeal properly overturning trial judge's finding of negligence — The Rural Municipality Act, 1989, S.S. 1989-90, c. R-26.1, s. 192.*

*Municipal law — Negligence — Liability of rural municipality for failing to post warning signs on local access road — Passenger sustaining injuries in motor vehicle accident on rural road — Trial judge apportioning part of liability to rural municipality — Whether Court of Appeal properly overturning trial judge's finding of negligence — The Rural Municipality Act, 1989, S.S. 1989-90, c. R-26.1, s. 192.*

*Appeals — Courts — Standard of appellate review — Whether Court of Appeal properly overturning trial judge's finding of negligence — Standard of review for questions of mixed fact and law.*

The appellant was a passenger in a vehicle operated by N on a rural road in the respondent municipality. N

**Paul Housen** *Appelant*

*c.*

**Municipalité rurale de Shellbrook nº 493** *Intimée*

**RÉPERTORIÉ : HOUSEN *c.* NIKOLAISEN**

**Référence neutre : 2002 CSC 33.**

Nº du greffe : 27826.

2001 : 2 octobre; 2002 : 28 mars.

Présents : Le juge en chef McLachlin et les juges L'Heureux-Dubé, Gonthier, Iacobucci, Major, Bastarache, Binnie, Arbour et LeBel.

EN APPEL DE LA COUR D'APPEL DE LA SASKATCHEWAN

*Délits civils — Véhicules automobiles — Routes — Négligence — Responsabilité d'une municipalité rurale qui omet d'installer des panneaux d'avertissement le long d'une voie d'accès locale — Blessures subies par un passager dans un accident automobile sur une route rurale — Responsabilité imputée en partie à la municipalité rurale par la juge de première instance — La Cour d'appel a-t-elle eu raison d'infirmer la décision de la juge de première instance concluant à la négligence de la municipalité rurale? — The Rural Municipality Act, 1989, S.S. 1989-90, ch. R-26.1, art. 192.*

*Droit municipal — Négligence — Responsabilité d'une municipalité rurale qui omet d'installer des panneaux d'avertissement le long d'une voie d'accès locale — Blessures subies par un passager dans un accident automobile sur une route rurale — Responsabilité imputée en partie à la municipalité rurale par la juge de première instance — La Cour d'appel a-t-elle eu raison d'infirmer la décision de la juge de première instance concluant à la négligence de la municipalité rurale? — The Rural Municipality Act, 1989, S.S. 1989-90, ch. R-26.1, art. 192.*

*Appels — Tribunaux judiciaires — Norme de contrôle applicable en appel — La Cour d'appel a-t-elle eu raison d'infirmer la décision de la juge de première instance concluant à la négligence de la municipalité rurale? — Norme de contrôle applicable à l'égard des questions mixtes de fait et de droit.*

L'appelant était passager dans le véhicule conduit par N sur une route rurale située sur le territoire de la

to the following types of questions: (1) questions of law; (2) questions of fact; (3) inferences of fact; and (4) questions of mixed fact and law.

A. *Standard of Review for Questions of Law*

On a pure question of law, the basic rule with respect to the review of a trial judge's findings is that an appellate court is free to replace the opinion of the trial judge with its own. Thus the standard of review on a question of law is that of correctness: Kerans, *supra*, at p. 90.

There are at least two underlying reasons for employing a correctness standard to matters of law. First, the principle of universality requires appellate courts to ensure that the same legal rules are applied in similar situations. The importance of this principle was recognized by this Court in *Woods Manufacturing Co. v. The King*, [1951] S.C.R. 504, at p. 515:

> It is fundamental to the due administration of justice that the authority of decisions be scrupulously respected by all courts upon which they are binding. Without this uniform and consistent adherence the administration of justice becomes disordered, the law becomes uncertain, and the confidence of the public in it undermined. Nothing is more important than that the law as pronounced . . . should be accepted and applied as our tradition requires; and even at the risk of that fallibility to which all judges are liable, we must maintain the complete integrity of relationship between the courts.

A second and related reason for applying a correctness standard to matters of law is the recognized law-making role of appellate courts which is pointed out by Kerans, *supra*, at p. 5:

> The call for universality, and the law-settling role it imposes, makes a considerable demand on a reviewing court. It expects from that authority a measure of expertise about the art of just and practical rule-making, an expertise that is not so critical for the first court. Reviewing courts, in cases where the law requires settlement, make law for future cases as well as the case under review.

les normes de contrôle se rapportant à chacune des catégories de questions suivantes : (1) les questions de droit; (2) les questions de fait; (3) les inférences de fait; (4) les questions mixtes de fait et de droit.

A. *La norme de contrôle applicable aux questions de droit*

Dans le cas des pures questions de droit, la règle fondamentale applicable en matière de contrôle des conclusions du juge de première instance est que les cours d'appel ont toute latitude pour substituer leur opinion à celle des juges de première instance. La norme de contrôle applicable à une question de droit est donc celle de la décision correcte : Kerans, *op. cit.*, p. 90.

Au moins deux raisons justifient l'application de la norme de la décision correcte aux questions de droit. Premièrement, le principe de l'universalité impose aux cours d'appel le devoir de veiller à ce que les mêmes règles de droit soient appliquées dans des situations similaires. Notre Cour a reconnu l'importance de ce principe dans *Woods Manufacturing Co. c. The King*, [1951] R.C.S. 504, p. 515 :

> [TRADUCTION] Il est fondamental, pour assurer la bonne administration de la justice, que l'autorité des décisions soit scrupuleusement respectée par tous les tribunaux qui sont liées par elles. Sans cette adhésion générale et constante, l'administration de la justice sera désordonnée, le droit deviendra incertain et la confiance dans celui-ci sera ébranlée. Il importe plus que tout que le droit, tel qu'il a été énoncé, [. . .] soit accepté et appliqué comme l'exige notre tradition; et même au risque de nous tromper, tous les juges étant faillibles, nous devons préserver totalement l'intégrité des rapports entre les tribunaux.

Une deuxième raison, connexe, d'appliquer la norme de la décision correcte aux questions de droit tient au rôle qu'on reconnaît aux cours d'appel en matière de création du droit et qu'a souligné Kerans, *op. cit.*, p. 5 :

> [TRADUCTION] Le principe de l'universalité — et le rôle de création du droit qu'il emporte — exige beaucoup du tribunal de révision. Il exige de ce tribunal qu'il fasse preuve d'un certain degré d'expertise dans l'art d'élaborer une règle de droit juste et pratique, expertise qui ne revêt pas une importance aussi cruciale pour le premier tribunal. Dans les affaires où le droit n'est pas fixé, le tribunal de révision élabore des règles de droit applicables tout autant à d'éventuelles affaires qu'à celle dont il est saisi.

8

9

# Memorandum

**Date:** November 28, 2018

**To:** AHS Medical Staff – Edmonton Zone

**From:** Dr. Francois Belanger, Vice President, Quality and Chief Medical Officer, AHS

**RE:** **Important medical staff update**

---

Good morning,

I would like to address a message that many Edmonton Zone physicians have received regarding a legal dispute with one of our former nuclear medicine physicians.

The message references ongoing legal action against Alberta Health Services (AHS) and the College of Physicians and Surgeons of Alberta (CPSA), and invites physicians to join a class action lawsuit. It is the position of both AHS and the CPSA that this repetitive legal action is groundless and will be dismissed by the courts.

I would like to reiterate that any type of abuse or harassment in the workplace is unacceptable. If you or your colleague have experienced this behaviour at work, I urge you to contact your medical leader directly. AHS takes allegations of harassment seriously and has a formal process in place to investigate allegations of this sort.

We are committed to creating physically and psychologically safe environments for all of our staff, physicians, patients and families.

If you have questions or concerns regarding this message or any other related issue, please do not hesitate to contact Dr. David Zygun directly.

Sincerely,

Dr. Francois Belanger
Vice President, Quality and Chief Medical Officer, AHS

Alberta Health Services

# Memorandum

**Date:** December 5, 2018

**To:** AHS Medical Staff – Edmonton Zone and Calgary Zone

**From:** Dr. Francois Belanger, Vice President, Quality and Chief Medical Officer, AHS

**RE:** **Important medical staff update**

---

Good morning,

Many Alberta Health Services (AHS) physicians from several Zones have received unsolicited emails from Dr. Viliam Makis, a former nuclear medicine physician at the Cross Cancer Institute, regarding ongoing legal disputes with AHS and the College of Physicians and Surgeons of Alberta (CPSA). These emails make a number of false assertions and are intended to damage the reputation of both organizations and medical leaders.

AHS has taken steps to address Dr. Makis' behavior and the false, unfounded and groundless allegations and complaints he has been making to multiple individuals, bodies and organizations. As a result of his ongoing lawsuits and continuous complaints, the Court of Queen's Bench has recently held that Dr. Makis is a vexatious litigant and found him to be in contempt of court. The Court has issued an Order to prevent him from engaging in further vexatious conduct.

We regret any harm these false assertions and communications have caused. We stand behind our staff and medical administrative leaders who are being targeted in this unfortunate situation. Every effort is being made to ensure this abusive conduct ceases.

I would like to reiterate that any type of abuse or harassment in the workplace is unacceptable. If you or a colleague have experienced this behaviour at work, I urge you to contact your medical leader directly. AHS takes these types of incidents seriously and has a formal process in place to investigate allegations of this sort.

If you have questions or concerns regarding this message or any other related issue, please do not hesitate to directly contact Edmonton Zone Medical Director Dr. David Zygun or Calgary Zone Medical Director Dr. Sid Viner.

Sincerely,

Dr. Francois Belanger
Vice President, Quality and Chief Medical Officer, AHS

# Court of Queen's Bench of Alberta

**Citation: Calgary (City) v. Manyluk, 2012 ABQB 178**

**Date:** 20120320
**Docket:** 1101 12156
**Registry:** Calgary



Between:

**City of Calgary**

Applicant

- and -

**William H. Manyluk**

Respondent



---

**Reasons for Judgment**
**of the**
**Honourable Mr. Justice C.M Jones**

---

## I. Introduction

[1] The Respondent, Mr. Manyluk, has resided at [...] - 12 Street S.W. in the city of Calgary (the "Property") since 1985. He has, for much of that period, challenged his annual property tax assessment. In furtherance of his challenges, he has pursued the various avenues of appeal statutorily available to property owners who take issue with their assessments (the "Assessment Tribunals"). Results at the Assessment Tribunal level have led him to commence six actions in this Court. His experiences before this Court have lead him to advance two appeals before the Court of Appeal of Alberta. The city of Calgary (the "City") has been a party to all such proceedings.

## II. The City's Application

General for Alberta, Ron Stevens, at the time the 2007 Amendments received second reading, are informative. He noted that:

> In June 2006 the Court of Queen's Bench suggested that Alberta Justice consider the recommendations contained in a report on how to deal with vexatious litigants. The report was authored by the Law Reform Commission of Nova Scotia. Working with those recommendations, Alberta Justice consulted three courts, the legal profession, and non-government organizations in September 2006 on proposed amendments to the Judicature Act. With valuable comments and input received from the courts and other stakeholders during the consultation, Alberta Justice proposed amendments to the vexatious litigants provision in this act. The Judicature Act deals with the jurisdiction and powers of the Court of Queen's Bench and the Court of Appeal of Alberta. It also deals with the administration of justice in the province, including some matters of the Provincial Court of Alberta. Amendments to this act will give these three courts more powers to deal with applications concerning vexatious litigants.

[6] Currently, the *Judicature Act* provides as follows in Part 2.1 - Vexatious Proceedings:

> Definitions
> 23(1) In this Part,
>
> (a) "clerk of the Court" means
> (i) in the case of the Court of Appeal, the Registrar or Deputy Registrar of the Court,
> (ii) in the case of the Court of Queen's Bench, a clerk, deputy clerk or acting clerk of the court of the judicial centre in which the proceeding is being instituted, and
> (iii) in the case of the Provincial Court, a clerk or deputy clerk of the Court;
> (b) "Court" means
> (i) the Court of Appeal,
> (ii) the Court of Queen's Bench, or
> (iii) the Provincial Court.
>
> (2) For the purposes of this Part, instituting vexatious proceedings or conducting a proceeding in a vexatious manner includes, without limitation, any one or more of the following:
>
> (a) persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction;
> (b) persistently bringing proceedings that cannot succeed or that have no reasonable expectation of providing relief;
> (c) persistently bringing proceedings for improper purposes;

controlled circumstances. Nevertheless, it is important keep in mind that, by limiting an individual's right to pursue redress in court, we alter the terms by which that individual engages our system of justice. As noted in *Midwest Property Management v. Moore*, 2003 ABQB 581, 341 AR 386 at para. 42:

> Justice Veit considered the seriousness of invoking such a process in *Hillcox v. Morrow* (1995), 175 A.R. 141 (Q.B.) (at paras. 11-12). She noted that the judiciary should prevent access to the Courts in only the rarest of circumstances and only then for the good of the community as a whole.

[50] Further, in *Household Trust Co. v. Golden Horse Farms Inc.* (1992]), 65 BCLR (2d) 355 (BCCA), Southin J.A. commented on the related notion of a court's inherent jurisdiction to prevent abuse of process:

> In my opinion, the Supreme Court of British Columbia has an inherent jurisdiction and a corresponding duty to exercise that jurisdiction to protect a petitioner or plaintiff who seeks relief in that Court from proceedings by a defendant who is vexatiously abusing the process of the court. That it is a jurisdiction to be exercised with great caution, I have no doubt. But not to exercise it where there is no other way to bring reason into proceedings is, in effect, to deprive the plaintiff or petitioner of justice according to law. The court if it fails to act becomes but a paper tiger.

## B. Requirements for the Application of Part 2.1

[51] Invocation of Part 2.1 of the *Judicature Act* requires that the Court be satisfied that a person is instituting vexatious proceedings or conducting proceedings in a vexatious manner. The legislation does not define vexatious conduct. Rather, it describes the acts of (i) instituting vexatious proceedings and (ii) conducting proceedings in a vexatious manner with reference to seven, non-exhaustive, examples of conduct considered to be vexatious. This approach appears to reflect the recommendations of the NSLRC 2006 Report. At p. 25, the authors note as follows:

> The Commission is of the view that an all-encompassing, general definition of "vexatious" should not be attempted for the purpose of vexatious litigant legislation. Instead, as an approach which provides definite direction, yet which allows courts flexibility to deal with particular circumstances, the Commission recommends that a vexatious litigants provision include the non-exhaustive list of factors (identified earlier in this section) setting out examples of potentially vexatious behaviour.

[52] In *Prince Edward Island v. Ayangma*, [1999] PEIJ No. 30 (SCTD), the Court considered the application of s. 61 of the *Supreme Court Act*, RSPEI 1988, c. S-10, which provided as follows:

> 61.(1) Where a judge of the Supreme Court is satisfied, on application, that a person has persistently and without reasonable grounds
>
> (a) instituted vexatious proceedings in any court; or
>
> (b) conducted a proceeding in any court in a vexatious manner,
>
> the judge may order that
>
> (c) no further proceeding be instituted by the person in any court; or
>
> (d) a proceeding previously instituted by the person in any court not be continued, except by leave of a judge of the Supreme Court

[53] The comments of Jenkins J. at para. 12 are helpful in understanding how to proceed with a determination of what constitutes vexatious conduct:

> It is a fundamental rule of legislative interpretation that meaning is to be given to all language included in the statute. It is presumed that the legislature avoids superfluous or meaningless words. Every word in a statute is presumed to make sense and to have a specific role to play in advancing the legislative purpose: Sullivan, Driedger on the Construction of Statutes (3rd ed.), p. 159. This implies that for consideration of s. 61, "vexatious" means something more or different than "without reasonable grounds". In Mascan Corp. v. French, supra, it was noted that categories of vexation are never closed; and that the word "vexatious" has not been clearly defined. It is noted there that in many of the reported decisions, legal proceedings have been held to be vexatious because they were instituted without any reasonable ground, and as a result those proceedings were found to constitute an abuse of the process of the court. An example of such proceedings is the bringing of one or more actions to determine an issue which has already been determined by a court. *In any event, whether an action is vexatious is a matter to be determined by objective rather than subjective standards.* [Emphasis added.]

[54] In *Jamieson v. Denman* 2004 ABQB 593, 365 AR 201, Watson J. (as he then was) discussed the concept of vexatiousness in a pre-Part 2.1 context. He noted as follows at paras. 126-129:

> I consider the word "vexatious" to carry with it a normative concept as well as a legal one. It seems to me that a party can be said to have acted in a vexatious manner, not merely that they acted in a manner which might be characterized as mean-spirited or nasty, but also that in fact the nastiness conveyed itself through to the legal process itself. In other words, that the legal process was being misused.
>
> My view of the word "vexatious" is that it connotes not simply that the party was acting without the highest of motives, or was acting in a manner which was hostile towards the other side. "Vexatious", as a word, means to me that the litigant's mental state goes beyond simple animus against the other side, and rises

Province of Alberta

# JUDICATURE ACT

Revised Statutes of Alberta 2000
Chapter J-2

Current as of December 15, 2017

Office Consolidation



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Suite 700, Park Plaza
10611 - 98 Avenue
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**(2)** In the case of an assignment of a debt or other chose in action, if the debtor, trustee or other person liable in respect of the debt or chose in action has had notice

(a) that the assignment is disputed by the assignor or anyone claiming under the assignor, or

(b) of any other opposing or conflicting claims to the debt or chose in action,

the debtor, trustee or other person is entitled, if the debtor, trustee or other person thinks fit, to call on the several persons making claim to the debt or chose in action to interplead concerning it.

RSA 1980 cJ-1 s21

**Time of essence**

**21** Stipulations in contracts, as to time or otherwise, that would not heretofore have been deemed to be or have become of the essence of the contracts in a court of equity shall receive the same construction and effect as they would receive in equity.

RSA 1980 cJ-1 s22

**Validity of orders**

**22** No order of the Court under any statutory or other jurisdiction may, as against a purchaser, and whether with or without notice, be invalidated on the ground

(a) of want of jurisdiction, or

(b) of want of concurrence, consent, notice or service.

RSA 1980 cJ-1 s23

## Part 2.1
## Vexatious Proceedings

**Definitions**

**23(1)** In this Part,

(a) "clerk of the Court" means

(i) in the case of the Court of Appeal, the Registrar or Deputy Registrar of the Court,

(ii) in the case of the Court of Queen's Bench, a clerk, deputy clerk or acting clerk of the court of the judicial centre in which the proceeding is being instituted, and

(iii) in the case of the Provincial Court, a clerk or deputy clerk of the Court;

(b) "Court" means

(i) the Court of Appeal,

(ii) the Court of Queen's Bench, or

(iii) the Provincial Court.

**(2)** For the purposes of this Part, instituting vexatious proceedings or conducting a proceeding in a vexatious manner includes, without limitation, any one or more of the following:

(a) persistently bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction;

(b) persistently bringing proceedings that cannot succeed or that have no reasonable expectation of providing relief;

(c) persistently bringing proceedings for improper purposes;

(d) persistently using previously raised grounds and issues in subsequent proceedings inappropriately;

(e) persistently failing to pay the costs of unsuccessful proceedings on the part of the person who commenced those proceedings;

(f) persistently taking unsuccessful appeals from judicial decisions;

(g) persistently engaging in inappropriate courtroom behaviour.

2007 c21 s2

**Application**

**23.1(1)** Where on application or on its own motion, with notice to the Minister of Justice and Solicitor General, a Court is satisfied that a person is instituting vexatious proceedings in the Court or is conducting a proceeding in a vexatious manner, the Court may order that

(a) the person shall not institute a further proceeding or institute proceedings on behalf of any other person, or

(b) a proceeding instituted by the person may not be continued,

without the permission of the Court.

**(2)** An application under subsection (1) may be made by a party against whom vexatious proceedings are being instituted or

# COURT OF APPEAL FOR ONTARIO

CITATION: Van Sluytman v. Muskoka (District Municipality), 2018 ONCA 32
DATE: 20180116
DOCKET: C63372, C63373, C63375, C63376, C63377, C63378, C63380 and C64065

Pepall, Benotto and Paciocco JJ.A.



BETWEEN — Docket: C63372 and C63373

Mr. Rory Adrian Van Sluytman

Plaintiff (Appellant)

and

Her Majesty the Queen in right of Ontario,
The District Municipality of Muskoka

Defendants (Respondents)

AND BETWEEN — Docket: C63375

Mr. Rory Adrian Van Sluytman

Plaintiff (Appellant)

and

Orillia Soldiers' Memorial Hospital

Defendant (Respondent)

AND BETWEEN Docket: C63376

Mr. Rory Adrian Van Sluytman

Plaintiff (Appellant)

and

Dr. Anthony Denning Shearing

Defendant (Respondent)



AND BETWEEN Docket: C63377

Mr. Rory Adrian Van Sluytman

Plaintiff (Appellant)

and

Muskoka Algonquin Healthcare

Defendant (Respondent)

AND BETWEEN Docket: C63378

Mr. Rory Adrian Van Sluytman

Plaintiff (Appellant)

and

Canadian Mental Health Association – Muskoka-Parry Sound branch

Defendant (Respondent)

AND BETWEEN Docket: C63380

Mr. Rory Adrian Van Sluytman

Plaintiff (Appellant)

and

Her Majesty the Queen in right of Canada,
Her Majesty the Queen in right of Ontario,
Legislative Assembly of Ontario,
Legal Aid Ontario,
Lake Country Community Legal Clinic

Defendants (Respondents)

AND BETWEEN Docket: C64065

Her Majesty the Queen in right of Ontario

Applicant (Respondent)

and

Rory Adrian Van Sluytman

Respondent (Appellant)

Rory Adrian Van Sluytman, acting in person

Meagan Williams and Jeremy Glick, for the respondent, the Attorney General of Ontario (C63372, C63373, C63380 and C64065)

Jameson W. Clow and Marnie J. Hudswell, for the respondent, the District Municipality of Muskoka (C63372 and C63373)

Logan Crowell, for the respondents, Orillia Soldiers' Memorial Hospital (C63375) and Muskoka Algonquin Healthcare (C63377)

Kosta Kalogiros and Brandon Mattalo, for the respondent, Dr. Anthony Denning Shearing (C63376)

Peter D. Duda, for the respondent, Muskoka-Parry Sound Community Mental Health Service (C63378)

Ian S. Epstein and Zack Garcia, for the respondent, Lake Country Community Legal Clinic (C63380)

Peter Sibenik and Wai Lam (William) Wong, for the Legislative Assembly of Ontario

Marie Abraham, for the respondent, Legal Aid Ontario (C63380)

Haniya Sheikh, for the respondent, the Attorney General of Canada

Heard: December 14, 2017

On appeal from the orders of Justice Thomas M. Wood of the Superior Court of Justice, dated January 23, 2017, with reasons reported at 2017 ONSC 481, and June 21, 2017, and the order of Justice Joseph Di Luca of the Superior Court of Justice, dated March 28, 2017, with reasons reported at 2017 ONSC 692.

**By the Court:**

## A. INTRODUCTION

[1] The appellant, Rory Adrian Van Sluytman, a self-represented litigant, brings eight appeals before this court, each involving one or more of the respondents.

[2] Seven appeals concern orders made by Wood J. and Di Luca J. of the Superior Court of Justice under the summary procedure provided for by R. 2.1.01(1) of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, dismissing actions brought by the appellant on the ground that they were frivolous or

[20] For these reasons, we see no basis to interfere with the R. 2.1.01 Orders.

[21] In light of this conclusion, we do not reach the question whether the expiry of a limitation period may be relied upon as an independent basis on which to dismiss an action under R. 2.1.01(1).



## C. APPEAL FROM CJA ORDER

[22] We reach a similar conclusion regarding the appellant's appeal from the CJA Order in appeal numbered C64065.

[23] Many of the salient characteristics of vexatious proceedings are usefully described in *Re Lang Michener et al. v. Fabian et al.* (1987) 59 O.R. (2d) 353 (H.C.). The application judge considered *Lang Michener* and these characteristics and evaluated the appellant's actions accordingly. He concluded at para. 13 that the various actions commenced by the appellant "are a classic reflection of many of the characteristics outlined in *Lang Michener*", noting, among other matters:

> - the appellant has commenced multiple actions involving the same issue or issues and threatened to commence 154 more actions in the face of dismissals of his previous ones;
> - in most of his actions, the appellant sought the acknowledgement and correction of perceived government shortcomings, as distinct from asserting a right recognized at law;

- the damages claims advanced by the appellant in many of his actions were grandiose – often ranging in quantum from $5 to $15 million – and bore no relation to the wrongs alleged;

- the appellant's asserted claims were repetitious, with many rolling over from one action to the next, in only slightly modified form;

- the appellant's written submissions on the CJA s. 140 application continued this same pattern and attempted, as the application judge put it at para. 15 of his reasons, to "lay the blame for his deficient pleadings at the door of the government and the courts for not providing adequate training or allowing sufficient leeway to self-represented litigants. The government of Canada and the Premier of Ontario are blamed for these deficiencies"; and

- the appellant has appealed 7 of the 14 rulings made on his actions and failed to pay several outstanding adverse costs awards.

[24] We agree with the application judge that these are hallmarks of vexatious proceedings, and a vexatious litigant.

[25] We have also considered, and reject, the appellant's many complaints of procedural unfairness relating to the CJA s. 140 application. It is unnecessary to detail those complaints in these reasons. On this record and, in some instances, as a matter of law, these complaints are without merit. So, too, is the appellant's contention that s. 140 of the CJA is an unjust legislative provision that was unfairly applied in his case.

CANADA

CONSOLIDATION

CODIFICATION

# Criminal Code

# Code criminel

R.S.C., 1985, c. C-46

L.R.C. (1985), ch. C-46

Current to September 26, 2018

Last amended on September 19, 2018

À jour au 26 septembre 2018

Dernière modification le 19 septembre 2018

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http://lois-laws.justice.gc.ca

**(a.1)** in any other case where a firearm is used in the commission of the offence, to imprisonment for life and to a minimum punishment of imprisonment for a term of four years; and

**(b)** in any other case, to imprisonment for life.

**a.1)** dans les autres cas où il y a usage d'une arme à feu lors de la perpétration de l'infraction, de l'emprisonnement à perpétuité, la peine minimale étant de quatre ans;

**b)** dans les autres cas, de l'emprisonnement à perpétuité.

### Subsequent offences

**(2)** In determining, for the purpose of paragraph (1)(a), whether a convicted person has committed a second or subsequent offence, if the person was earlier convicted of any of the following offences, that offence is to be considered as an earlier offence:

**(a)** an offence under this section;

**(b)** an offence under subsection 85(1) or (2) or section 244 or 244.2; or

**(c)** an offence under section 220, 236, 239, 272 or 273, subsection 279(1) or section 279.1 or 346 if a firearm was used in the commission of the offence.

However, an earlier offence shall not be taken into account if 10 years have elapsed between the day on which the person was convicted of the earlier offence and the day on which the person was convicted of the offence for which sentence is being imposed, not taking into account any time in custody.

### Récidive

**(2)** Lorsqu'il s'agit de décider, pour l'application de l'alinéa (1)a), si la personne déclarée coupable se trouve en état de récidive, il est tenu compte de toute condamnation antérieure à l'égard :

**a)** d'une infraction prévue au présent article;

**b)** d'une infraction prévue aux paragraphes 85(1) ou (2) ou aux articles 244 ou 244.2;

**c)** d'une infraction prévue aux articles 220, 236, 239, 272 ou 273, au paragraphe 279(1) ou aux articles 279.1 ou 346, s'il y a usage d'une arme à feu lors de la perpétration de l'infraction.

Toutefois, il n'est pas tenu compte des condamnations précédant de plus de dix ans la condamnation à l'égard de laquelle la peine doit être déterminée, compte non tenu du temps passé sous garde.

### Sequence of convictions only

**(3)** For the purposes of subsection (2), the only question to be considered is the sequence of convictions and no consideration shall be given to the sequence of commission of offences or whether any offence occurred before or after any conviction.

R.S., 1985, c. C-46, s. 344; 1995, c. 39, s. 149; 2008, c. 6, s. 32; 2009, c. 22, s. 14.

### Précision relative aux condamnations antérieures

**(3)** Pour l'application du paragraphe (2), il est tenu compte de l'ordre des déclarations de culpabilité et non de l'ordre de perpétration des infractions, ni du fait qu'une infraction a été commise avant ou après une déclaration de culpabilité.

L.R. (1985), ch. C-46, art. 344; 1995, ch. 39, art. 149; 2008, ch. 6, art. 32; 2009, ch. 22, art. 14.

### Stopping mail with intent

**345** Every one who stops a mail conveyance with intent to rob or search it is guilty of an indictable offence and liable to imprisonment for life.

R.S., c. C-34, s. 304.

### Fait d'arrêter la poste avec intention de vol

**345** Est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité quiconque arrête un transport du courrier avec l'intention de le voler ou de le fouiller.

S.R., ch. C-34, art. 304.

### Extortion

**346 (1)** Every one commits extortion who, without reasonable justification or excuse and with intent to obtain anything, by threats, accusations, menaces or violence induces or attempts to induce any person, whether or not he is the person threatened, accused or menaced or to whom violence is shown, to do anything or cause anything to be done.

### Extorsion

**346 (1)** Commet une extorsion quiconque, sans justification ou excuse raisonnable et avec l'intention d'obtenir quelque chose, par menaces, accusations ou violence, induit ou tente d'induire une personne, que ce soit ou non la personne menacée ou accusée, ou celle contre qui la violence est exercée, à accomplir ou à faire accomplir quelque chose.

term that is one-half of the longest term to which a person who is guilty of that offence is liable;

**(c)** every one who attempts to commit or is an accessory after the fact to the commission of an offence punishable on summary conviction is guilty of an offence punishable on summary conviction; and

**(d)** every one who attempts to commit or is an accessory after the fact to the commission of an offence for which the offender may be prosecuted by indictment or for which he is punishable on summary conviction

**(i)** is guilty of an indictable offence and liable to imprisonment for a term not exceeding a term that is one-half of the longest term to which a person who is guilty of that offence is liable, or

**(ii)** is guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 463; R.S., 1985, c. 27 (1st Supp.), s. 59; 1998, c. 35, s. 120.

durée de l'emprisonnement maximal encouru par une personne coupable de cet acte;

**c)** quiconque tente de commettre une infraction punissable sur déclaration de culpabilité par procédure sommaire, ou est complice, après le fait, de la perpétration d'une telle infraction, est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire;

**d)** quiconque tente de commettre une infraction pour laquelle l'accusé peut être poursuivi par mise en accusation ou punissable sur déclaration de culpabilité par procédure sommaire ou est complice après le fait de la commission d'une telle infraction est coupable :

**(i)** soit d'un acte criminel et passible d'une peine d'emprisonnement égale à la moitié de la peine d'emprisonnement maximale dont est passible une personne déclarée coupable de cette infraction,

**(ii)** soit d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

L.R. (1985), ch. C-46, art. 463; L.R. (1985), ch. 27 (1er suppl.), art. 59; 1998, ch. 35, art. 120.

### Counselling offence that is not committed

**464** Except where otherwise expressly provided by law, the following provisions apply in respect of persons who counsel other persons to commit offences, namely,

**(a)** every one who counsels another person to commit an indictable offence is, if the offence is not committed, guilty of an indictable offence and liable to the same punishment to which a person who attempts to commit that offence is liable; and

**(b)** every one who counsels another person to commit an offence punishable on summary conviction is, if the offence is not committed, guilty of an offence punishable on summary conviction.

R.S., 1985, c. C-46, s. 464; R.S., 1985, c. 27 (1st Supp.), s. 60.

### Conseiller une infraction qui n'est pas commise

**464** Sauf disposition expressément contraire de la loi, les dispositions suivantes s'appliquent à l'égard des personnes qui conseillent à d'autres personnes de commettre des infractions :

**a)** quiconque conseille à une autre personne de commettre un acte criminel est, si l'infraction n'est pas commise, coupable d'un acte criminel et passible de la même peine que celui qui tente de commettre cette infraction;

**b)** quiconque conseille à une autre personne de commettre une infraction punissable sur déclaration de culpabilité par procédure sommaire est, si l'infraction n'est pas commise, coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

L.R. (1985), ch. C-46, art. 464; L.R. (1985), ch. 27 (1er suppl.), art. 60.

### Conspiracy

**465 (1)** Except where otherwise expressly provided by law, the following provisions apply in respect of conspiracy:

**(a)** every one who conspires with any one to commit murder or to cause another person to be murdered, whether in Canada or not, is guilty of an indictable offence and liable to a maximum term of imprisonment for life;

### Complot

**465 (1)** Sauf disposition expressément contraire de la loi, les dispositions suivantes s'appliquent à l'égard des complots :

**a)** quiconque complote avec quelqu'un de commettre un meurtre ou de faire assassiner une autre personne, au Canada ou à l'étranger, est coupable d'un acte criminel et passible de l'emprisonnement à perpétuité;

**(b)** every one who conspires with any one to prosecute a person for an alleged offence, knowing that he did not commit that offence, is guilty of an indictable offence and liable

**(i)** to imprisonment for a term not exceeding ten years, if the alleged offence is one for which, on conviction, that person would be liable to be sentenced to imprisonment for life or for a term not exceeding fourteen years, or

**(ii)** to imprisonment for a term not exceeding five years, if the alleged offence is one for which, on conviction, that person would be liable to imprisonment for less than fourteen years;

**(c)** every one who conspires with any one to commit an indictable offence not provided for in paragraph (a) or (b) is guilty of an indictable offence and liable to the same punishment as that to which an accused who is guilty of that offence would, on conviction, be liable; and

**(d)** every one who conspires with any one to commit an offence punishable on summary conviction is guilty of an offence punishable on summary conviction.

**(2)** [Repealed, 1985, c. 27 (1st Supp.), s. 61]

**Conspiracy to commit offences**

**(3)** Every one who, while in Canada, conspires with any one to do anything referred to in subsection (1) in a place outside Canada that is an offence under the laws of that place shall be deemed to have conspired to do that thing in Canada.

**Idem**

**(4)** Every one who, while in a place outside Canada, conspires with any one to do anything referred to in subsection (1) in Canada shall be deemed to have conspired in Canada to do that thing.

**Jurisdiction**

**(5)** Where a person is alleged to have conspired to do anything that is an offence by virtue of subsection (3) or (4), proceedings in respect of that offence may, whether or not that person is in Canada, be commenced in any territorial division in Canada, and the accused may be tried and punished in respect of that offence in the same manner as if the offence had been committed in that territorial division.

**b)** quiconque complote avec quelqu'un de poursuivre une personne pour une infraction présumée, sachant qu'elle n'a pas commis cette infraction, est coupable d'un acte criminel et passible :

**(i)** d'un emprisonnement maximal de dix ans, si la prétendue infraction en est une pour laquelle, sur déclaration de culpabilité, cette personne serait passible de l'emprisonnement à perpétuité ou d'un emprisonnement maximal de quatorze ans,

**(ii)** d'un emprisonnement maximal de cinq ans, si la prétendue infraction en est une pour laquelle, sur déclaration de culpabilité, cette personne serait passible d'un emprisonnement de moins de quatorze ans;

**c)** quiconque complote avec quelqu'un de commettre un acte criminel que ne vise pas l'alinéa a) ou b) est coupable d'un acte criminel et passible de la même peine que celle dont serait passible, sur déclaration de culpabilité, un prévenu coupable de cette infraction;

**d)** quiconque complote avec quelqu'un de commettre une infraction punissable sur déclaration de culpabilité par procédure sommaire est coupable d'une infraction punissable sur déclaration de culpabilité par procédure sommaire.

**(2)** [Abrogé, L.R. (1985), ch. 27 (1er suppl.), art. 61]

**Complot en vue de commettre une infraction**

**(3)** Les personnes qui, au Canada, complotent de commettre, à l'étranger, des infractions visées au paragraphe (1) et également punissables dans ce pays sont réputées l'avoir fait en vue de les commettre au Canada.

**Idem**

**(4)** Les personnes qui, à l'étranger, complotent de commettre, au Canada, les infractions visées au paragraphe (1) sont réputées avoir comploté au Canada.

**Compétence**

**(5)** Lorsqu'il est allégué qu'une personne a comploté de faire quelque chose qui est une infraction en vertu des paragraphes (3) ou (4), des procédures peuvent être engagées à l'égard de cette infraction dans toute circonscription territoriale du Canada, que l'accusé soit ou non présent au Canada et il peut subir son procès et être puni à l'égard de cette infraction comme si elle avait été commise dans cette circonscription territoriale.

# Court of Queen's Bench of Alberta

**Citation: Chutskoff v Bonora, 2014 ABQB 389**



**Date:** 20140624
**Docket:** 0803 06510
**Registry:** Edmonton

Between:

**Dr. Brian Chutskoff, Executor and Trustee Under the Last Will and Testament of Charles Chutskoff, Deceased**

Plaintiff

- and -

**Doris Celestina Esther Bonora, Reynolds Mirth Richards & Farmer LLP, and John Doe**

Defendants

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**Memorandum of Decision**
**of the**
**Honourable Mr. Justice Peter Michalyshyn**

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## I. Introduction

[1] On May 9, 2008, Dr. Brian Chutskoff ["Dr. Chutskoff"] sued a named lawyer, Doris Bonora, a second unidentified lawyer, and the law firm of Reynolds Mirth Richards & Farmer [collectively, the "Defendants"]. In this action [the "RMRF Action"] Dr. Chutskoff claims:

1. that the Defendants had agreed to represent Dr. Chutskoff in a challenge to the registration of a Saskatchewan judgment, but

2. several days later the Defendants then refused to represent him, and

[130] The RMRF Action is therefore struck out entirely. This lawsuit is ended.

### C. Dr. Chutskoff is a Vexatious Litigant

[131] The *Judicature Act*, RSA 2000, c J-2 authorizes a judge of this court to restrict the right of a person start or continue litigation in Alberta courts where that person has initiated or engaged in vexatious proceeding. As previously reviewed, *Judicature Act*, s 23(2) provides a non-exclusive set of seven examples of vexatious litigation conduct. Any one or more of those indicia is a basis to find a person has engaged in vexatious misconduct. The other indicia of vexatious litigation I have identified are an additional basis to find that result.

[132] I have surveyed in some detail Dr. Chutskoff's litigation history. Justice Miller has provided additional relevant details in his Enforcement Action judgment. There is no question that Dr. Chutskoff persistently engages in vexatious litigation. It is time for that to end.

[133] For now well over a decade Dr. Chutskoff has embroiled himself, Ms. Ruskin and her estate, and the courts in the inheritance of Charles Chutskoff. He has been found in criminal contempt of court and been imprisoned as a consequence.

[134] Justice Tilleman's decision in ***R v Fearn***, 2014 ABQB 233 at para 52 supports the outcome in the case before me. In ***Fearn*** Justice Tilleman concluded that when the legislature passed the vexatious litigation provisions in the Alberta *Judicature Act* to restrict abusive litigation then it "... falls to the courts to use that in a meaningful, efficient way ...". He cites the California Court of Appeals in ***First Western Development Corp. v Superior Court (Andrisani)*** (1989) 261 Cal Rptr 116 at para 7:

> The unreasonable burden placed upon the courts by groundless litigation prevents the speedy consideration of proper litigation and the tremendous time and effort consumed by unjustifiable suits makes it imperative that the courts enforce the vexatious litigant statutes enacted by the Legislature. ... [Emphasis added.]

[135] It is therefore ordered that:

1. Dr. Chutskoff is prohibited from commencing, or attempting to commence, or continuing any appeal, action, application or proceeding in the Court of Appeal, the Court of Queen's Bench or the Provincial Court of Alberta, on his own behalf or on behalf of any other person or estate without an order of a judge of the court in which the proceeding is conducted.

2. The presiding judge may at any time direct that notice of the application to commence or continue an appeal, action, application or proceeding be given to any other person.

3. Dr. Chutskoff must describe himself in the application and any pleadings by his full name, and not by using initials or a pseudonym.

4. An application to commence any appeal, action, application or proceeding must be accompanied by an affidavit:

   (i) attaching a copy of the order declaring Dr. Chutskoff to be a vexatious litigant,

[148] Dr. Chutskoff's capacity is self-evident and obvious from his conduct of this litigation. It is absurd for someone to file extensive and detailed legal submissions and then claim he lacks an understanding of the litigation, its processes, and the implications of decisions coming out of it. This self-contradictory excerpt from Dr. Chutskoff's initial submissions illustrates the point:

> 3.3 My defences against a premature SJ Dismissal Judgment are, from my perspective, numerous.
>
> 3.3.1 However, I have no ability to understand the information related to this matter and my ability to comprehend the reasonably foreseeable legal-consequences to fall upon me from either making a decision on the matter of failing to make a decision on the matter is opaque.

[149] On the whole of the record before me there is no reason to doubt Dr. Chutskoff understands the claims he is making and the implications of the decisions coming out of it. The complaint he now raises – that he cannot understand these proceedings or for that matter any of the proceedings that came before as long ago as 2001 - is an illegitimate means to his end of continuing (and expanding) his litigation. No expert evidence is necessary or would be helpful in concluding what is obvious on the record before me: that Dr. Chutskoff:

1. is extremely well aware of the substance and nature of his litigation, and has vigorously attempted to pursue and expand that at every opportunity; and

2. at a minimum understands the consequences of his actions because this is all familiar subject matter; he has been there and done all this before.

[150] The fact someone repeatedly engages in litigation that is wrong, an abuse of process, that seeks to evade proper procedure, and which causes no benefit to anyone is not necessarily proof or a basis for the conclusion that the litigant does not *understand* the result of that strategy. As Justice Shelley observed in ***McMeekin v Alberta (Attorney General)***, at para 119:

> ... People make mistakes, and (hopefully) learn from them. When a person takes an incorrect action, is informed of their error, but then persists and commits the same 'error' again and again, that is evidence that the person does not misunderstand their action is incorrect. Rather, that indicates the person *wants* to break the rules. [Italic in original.]

[151] I conclude this is also true of Dr. Chutskoff. On this record there is no doubt he has capacity to conduct his own litigation. That is not the problem. The problem is that he engages in litigation for the wrong reasons, which is why I have declared him a vexatious litigant.

## V. Conclusion

[152] The RMRF Action is struck out entirely as vexatious litigation. I order that Dr. Chutskoff is a vexatious litigant, and restricted from filing or continuing actions in all Alberta Courts, subject to the submissions of the Attorney Generals.

[153] If I am incorrect in my conclusion that the RMRF Action is vexatious then I conclude Dr. Chutskoff has capacity to conduct his own litigation and his application for a litigation representative is denied.

# Court of Queen's Bench of Alberta

**Citation: Knutson (Re), 2018 ABQB 858**



**Date:**20181017
**Docket:** 1803 20494
**Registry:** Edmonton

In The Matter Of

**James Kenneth Knutson**

Respondent

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**Memorandum of Decision**
**of the**
**Honourable Mr. Justice D.R.G. Thomas**

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2. hopeless proceedings,
3. escalating proceedings,
4. bringing proceedings for improper purposes,
5. initiating "busybody" lawsuits to enforce alleged rights of third parties,
6. failure to honour court-ordered obligations,
7. persistently taking unsuccessful appeals from judicial decisions,
8. persistently engaging in inappropriate courtroom behaviour,
9. unsubstantiated allegations of conspiracy, fraud, and misconduct,
10. scandalous or inflammatory language in pleadings or before the court, and
11. advancing OPCA strategies.

[37] Additional indicia categories have been identified in subsequent decisions of Canadian courts:

1. using court processes to further illegal activities (***Re Boisjoli***, at paras 98-103; ***Rothweiler v Payette***, 2018 ABQB 288 at para 35; ***McKechnie (Re)***, 2018 ABQB 677 at paras 3, 30);
2. "judge shopping" (***Onischuk (Re)***, 2017 ABQB 659 at para 18; ***McCargar v Canada***, 2017 ABQB 729 at paras 8-9, 68 Alta LR (6th) 305; ***Re Botar***, 2018 ABQB 193 at paras 23-28; ***Bourque v Tensfeldt***, 2018 ABQB 419 at paras 17-18);
3. "forum shopping" (***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 548 at paras 91-97; ***MacLeod v Bank of Montreal***, 2018 ONSC 5795 at para 7);
4. bad faith litigation strategies to pre-empt, divert, or sabotage proceedings that address court access restrictions (***Alberta Lawyers Insurance Association v Bourque***, 2018 ABQB 821 at paras 159-160, 175);
5. where a litigant indicates an intention to engage in future abuse of court processes (***Lofstrom v Radke***, 2017 ABCA 362 at para 8; ***Van Sluytman v Muskoka (District Municipality)***, 2018 ONCA 32 at paras 23-24, leave to appeal to SCC filed, 38057 (14 March 2018); ***Templanza v Ford***, 2018 ABQB 168 at para 120, 69 Alta LR (6th) 110; ***Rothweiler v Payette***, 2018 ABQB 288 at paras 42-44; ***ET v Calgary Catholic School District No 1***, 2017 ABCA 349 at para 11, leave to appeal to SCC filed, 38081 (1 May 2018); ***Lee v Canada (Attorney General)***, 2018 ABQB 464 at para 148);
6. where litigation has a political focus and is directed towards acknowledgement and correction of perceived government shortcomings, rather than asserting a right recognized in law (***Van Sluytman v Muskoka (District Municipality)***, at paras 23-24; ***Rothweiler v Payette***, 2018 ABQB 288 at para 36);
7. where the litigant minimizes or dismisses litigation defects and abuse on the basis that the person is a self-represented litigant (***Van Sluytman v Muskoka (District***

***Municipality)***, at paras 23-24; ***Re Bruce***, 2018 ABQB 283 at paras 8-9; ***Alberta Treasury Branches v Hawrysh***, 2018 ABQB 618 at paras 36-46); and

8. employing proxy actors to circumvent court orders, court access restrictions, impede litigation, and improperly communicate with the court (***Onischuk v Edmonton (City)***, at paras 24-25, 32; ***Onischuk (Re)***, at paras 11, 21; ***MacKinnon v Bowden Institution***, 2018 ABQB 144 at paras 44-85).

[38] A decision to impose court access restrictions requires a broad-based inquiry into the litigation activities of the candidate for those restrictions. A court may refer to external evidence, including:

1. activities both inside and outside of the courtroom (***Bishop v Bishop***, 2011 ONCA 211 at para 9, 200 ACWS (3d) 1021, leave to appeal to SCC refused, 34271 (20 November 2011); ***Henry v El***, 2010 ABCA 312 at paras 2-3, 5, 193 ACWS (3d) 1099, leave to appeal to SCC refused, 34172 (14 July 2011);

2. the litigant's entire public dispute history (***Thompson v International Union of Operating Engineers Local No 995***, 2017 ABCA 193 at para 25, leave to appeal to SCC refused, 37974 (7 June 2018)), including:

    a) litigation in other jurisdictions (***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 at paras 83-127, 543 AR 132; ***Curle v Curle***, 2014 ONSC 1077 at para 24; ***Fearn v Canada Customs***, 2014 ABQB 114 at paras 102-105, 586 AR 23; ***Hill v Bundon***, 2018 ABQB 506 at paras 68-80, 91-96; ***Alberta Lawyers Insurance Association v Bourque***, 2018 ABQB 821 at paras 41-51);

    b) non-judicial proceedings (***Bishop v Bishop***, at para 9; ***Thompson v International Union of Operating Engineers Local No 995***, 2017 ABCA 193 at paras 24-25); and

    c) public records that are a basis for judicial notice (***Wong v Giannacopoulos***, 2011 ABCA 277 at para 6, 515 AR 58); and

3. whether the person has previously engaged in abusive litigation conduct, and/or was declared a "vexatious litigant" or made subject to court access restrictions: ***Canada v Olumide***, 2017 FCA 42 at para 37, [2017] GSTC 17; ***Hill v Bundon***, at paras 68-80; ***Alberta Lawyers Insurance Association v Bourque***, 2018 ABQB 821 at paras 153-158; ***Fabrikant v Canada***, 2018 FCA 171 at paras 14-15.

[39] *Any* indicium is a basis for the Court to evaluate whether or not intervention is warranted to control future abusive litigation. The presence of multiple indicia generally favours court intervention: e.g. ***Chutskoff v Bonora***, at paras 131-132; ***Re Boisjoli***, at para 104; ***Ewanchuk v Canada (Attorney General)***, 2017 ABQB 237 at para 158, 54 Alta LR (6th) 135, appeal abandoned, Edmonton 1603-0287AC (Alta CA).

[40] The preferred approach is prospective rather than punitive: ***1985 Sawridge Trust v Alberta (Public Trustee)***, 2017 ABQB 548 at paras 42-76; ***Templanza v Ford***, at paras 102-104. When evaluating whether court access limitations are appropriate, a court asks what can be anticipated from a litigant:

# Court of Queen's Bench of Alberta

**Citation: Thompson v International Union of Operating Engineers Local No. 955, 2017 ABQB 210**

**Date:** 20170327
**Dockets:** 1003 19708, 1003 21570
**Registry:** Edmonton



Between:

**Derek Thompson**

Respondent / Plaintiff

- and -

**International Union of Operating Engineers Local No. 955**

Applicant / Defendant

and

Between:

**Derek Thompson**

Respondent / Plaintiff

- and -

**International Union of Operating Engineers**

Applicant / Defendant

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**Memorandum of Decision**
**of the**
**Honourable Mr. Justice K.G. Nielsen**

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[61] I conclude that Mr. Thompson's actions in the litigation, as outlined above, have been improper and abusive uses of the Court process, have caused much delay during the pre-trial process, have consumed considerable resources, and have detracted from the true issues before the Court. Further, it is reasonable to anticipate that Mr. Thompson will continue to proceed in a vexatious manner unless the Court imposes controls over his activities through a vexatious litigant order. Therefore, I find that the record supports a declaration to the effect that Mr. Thompson is a vexatious litigant.

[62] Mr. Thompson applied for orders that the following persons be declared vexatious litigants for "many abuses of the legal process in this action", and "their improper , shameful, & Or disgraceful" abuse of legal processes and delays:

- James Callahan, I.U.O.E. president (in the International Action);
- Bruce Moffatt, I.U.O.E. Local 955 business manager (in the Local Action); and
- Murray McGown (in both actions).

[63] The *Judicature Act*, s 23.1(5) prohibits the Court from making a vexatious litigant order against counsel. Therefore, I dismiss Mr. Thompson's application as against Mr. McGown.

[64] As for Mr. Callahan and Mr. Moffatt, even assuming they are "litigants" in the Local Action or the International Action (which was a point of contention among the parties), there is nothing before the Court to support Mr. Thompson's assertion that they have taken any steps which could be considered to be vexatious or abusive of the Court's process. Therefore, I dismiss his application for an order declaring them to be vexatious litigants.

## VII. Order

[65] The Court's ultimate function is to facilitate resolution of disputes. Mr. Thompson is entitled to access the Court for this purpose. At this point in the litigation, any order should ideally be designed to assist Mr. Thompson's litigation in moving toward some sort of resolution.

[66] The Unions request a vexatious litigant order as well as an order requiring Mr. Thompson to pay outstanding costs awards, $55,000 in security for costs, and/or permanent stays of the Local Action and the International Action.

### A. Vexatious Litigant Order

[67] I have concluded that it is appropriate to order that Mr. Thompson obtain leave prior to filing further documents or initiating further proceedings. This order is intended to assist in focusing Mr. Thompson's litigation so that the Court can facilitate resolution of the real issues before the Court.

[68] Consequently, with respect to the Actions I order as follows:

> 1. If Mr. Thompson wishes to file any document in either ***Derek Thompson v International Union of Operating Engineers***, Docket 1003 21570 or ***Derek Thompson v International Union of Operating Engineer***s, Local 955, Docket 1003-19708, he shall send to me or my designate an affidavit:

# Canada Post Corp. v. Varma, 2000 CanLII 15754 (FC)


| | |
|---|---|
| Date: | 2000-06-09 |
| File number: | T-498-99 |
| Other citations: | 192 FTR 278 — [2000] FCJ No 851 (QL) — 97 ACWS (3d) 1122 |
| Citation: | Canada Post Corp. v. Varma, 2000 CanLII 15754 (FC), <http://canlii.ca/t/43rj>, retrieved on 2019-07-11 |


Date: 20000609

Docket: T-498-99

**BETWEEN:**

**CANADA POST CORPORATION**

Applicant

- and -

**ADITYA NARAYAN VARMA**

Respondent

**REASONS FOR JUDGMENT**

**DAWSON J.**

[1] Canada Post Corporation seeks to have Mr. Varma declared a vexatious litigant in the Federal Court of Canada pursuant to the provisions of section 40 of the *Federal Court Act* (the "*Act*"), R.S.C. 1985, c. F-7 as amended by S.C. 1990, c.8, s.11.

[2] In support of its application, Canada Post filed the affidavit of George Avraam, a lawyer with the firm of solicitors representing Canada Post Corporation in this proceeding. Mr. Avraam was cross-examined on that affidavit by Mr. Varma, who is self represented in this proceeding.

[3] Mr. Avraam"s affidavit provided a chronology of proceedings commenced by Mr. Varma in the courts of Ontario, the Federal Court of Canada and various federal tribunals.

[4] In response, Mr. Varma filed the affidavit of Ralph Murray Gavert, which contained in the order of 20 volumes of exhibits.

**SECTION 40 PROCEEDINGS**

[5] This matter originally came on for hearing before me on February 8, 2000. After continuing with his oral submissions for some time, Mr. Varma stated:

> So, Milady, I have " the situation is dichotomous here for me. Either I stand here in front of you and in this Federal Court of Canada, as corrupt and as debauched as it is, risk deteriorating my condition and give my life up, which would bring great happiness to you all, or ask you, not by any judicial laws or anything but on humanity alone, that, please, for that fraction of a second, pretend I"m white and pretend I"m Jew and let me go home and rest to a point where I am able, and my doctor recommends it, that I"m able to come in and battle you.

[6] Thereafter, as stated in my Reasons for Order and Order of March 15, 2000:

> [1] ... I gave leave to the respondent to file with the Court a motion seeking leave to have the hearing of the application adjourned to a further fixed date so as to permit him to conclude his oral submission to the Court on the merits of the application. The respondent did serve such motion.
>
> [2] In response, the applicant did not file any responsive material. By letter dated March 1st, 2000, through its counsel, it wrote advising that "we may be amenable to adjourning" the application, but the applicant wanted to ensure that there was no delay in setting the next available hearing date.
>
> [3] In the result, I requested that a teleconference be scheduled to discuss setting a date. In response, by letter dated March 3rd, 2000, the respondent

[26] Of counsel appearing for Canada Post, Mr. Varma has repeatedly said words to the effect that he is a lawyer and as such, is not a nice person and that he continues to tell lies.

**(iii) Other orders made outside of the Federal Court of Canada**

[27] On February 19, 1998, Festeryga J. of the Ontario Court of Justice (General Division) gave judgment declaring Mr. Varma to be a vexatious litigant. No proceedings may be instituted by Mr. Varma in any court in that jurisdiction except by leave of a judge of the Ontario Court of Justice (General Division). Furthermore, all proceedings previously instituted by Mr. Varma in the Ontario Court of Justice (General Division) and the Ontario Court of Appeal may not be continued except by leave. Festeryga J. also ordered costs against Mr. Varma in the amount of $2,000.00.

[28] In so concluding, Festeryga J. stated:

> [7] I have looked at the whole history of the matter and I am satisfied that the respondent has persistently and without reasonable grounds instituted vexatious proceedings. He has appealed the various decisions in which he has been unsuccessful and invariably the grounds for appeal were that the decision was made in a "Court of Star Chambers". In my humble opinion this is a totally untenable position to take.

[29] Mr. Varma"s attempt to appeal the order of Justice Festeryga was unsuccessful as it was brought out of time and applications for leave to appeal to the Supreme Court of Canada were dismissed.

[30] By order dated April 16, 1999, Bastarache J. of the Supreme Court of Canada granted an application by the Registrar of the Supreme Court under Rule 51.1 of the *Rules of the Supreme Court of Canada* to have proceedings between the applicant and respondent stayed. Mr. Varma is presently barred from filing further proceedings in respect of the matter. See: *Varma v. Canada Post Corp.,* [1999] S.C.C.A. No. 141.

**CONCLUSION**

[31] I have carefully considered Mr. Varma"s conduct and the material filed before me.

[32] The evidence before the Court establishes that in the proceedings brought by Mr. Varma in this Court, he has attempted to re-litigate issues. Frivolous appeals and requests for reconsideration have been instituted.

[33] Unsubstantiated allegations of impropriety have been levelled at the lawyer who has acted for Canada Post against Mr. Varma and against judges of this Court. He has distributed court documents to parties unrelated to the proceedings for purposes extraneous to the litigation.

[34] Mr. Varma has been declared a vexatious litigant in Ontario and is the subject of an order under Rule 51.1 of the *Rules of the Supreme Court of Canada*.

[35] The evidence demonstrates without doubt that Mr. Varma has persistently instituted vexatious proceedings or has conducted a proceeding in a vexatious manner.

[36] I conclude, therefore, that this is an appropriate case to grant the relief requested. Nevertheless, there is one exception to this order. This decision does not apply to proceedings in the Federal Court of Appeal in Court File A-161-00. This is Mr. Varma"s appeal from my order setting a date for the hearing of the conclusion of this application. I make this one exception on the ground it is not, in my opinion, appropriate for this decision to immunize my earlier decision in this matter from review.

[37] The applicant shall have its costs of this application fixed in the amount of $5,000.00, and payable forthwith.

"Eleanor R. Dawson"

Judge

Ottawa, Ontario

June 9, 2000

**CITATION:** *West Vancouver School District No. 45 v. Callow*, 2014 ONSC 2547
**COURT FILE NO.:** 13-59060
**DATE:** 2014/04/23

**ONTARIO**

**SUPERIOR COURT OF JUSTICE**

| | | |
|---|---|---|
| **BETWEEN:** | ) | |
| Board of School Trustees (West Vancouver SD #45) | ) | |
| Applicant | ) | Charles V. Hofley, for the Applicant |
| **– and –** | ) | |
| Roger Callow | ) | |
| Respondent | ) | Self-Represented |
| | ) | **HEARD:** April 10, 2014 |

**REASONS FOR DECISION**

**C. MCKINNON J.**

**Overview**

[1] Roger Callow is a litigant possessed of seemingly inexhaustible stamina. His behaviour suggests that he views the Canadian court system as something akin to a perpetual, all-day, all you can eat buffet. Having been rebuked by the courts and tribunals of British Columbia, the Federal Court of Canada and the Supreme Court of Canada, Mr. Callow has now taken aim at Ontario. Ontario lacks the jurisdiction to deal with his case. As a result, Mr. Callow's litigation must be stopped. Now.

involved, as well as the litigant's involvement within those proceedings: *Dale Streiman & Kurz LLP v. De Teresi* (2007), 84 O.R. (3d) 383 (Sup. Ct.); *Ontario v. Deutsch*, [2004] O.J. No. 535 at para. 18 (Sup. Ct.).

[39] Courts may also consider the behaviour of a litigant, both inside and outside the courtroom, in determining whether a litigant is vexatious and whether restrictions should be imposed under s. 140 of the *CJA: Canada Post Corp. v. Varma* (2000), 192 F.T.R. 278 at para. 23.

**Application of the Law to the Facts:**

[40] All the indicators and characteristics of vexatious litigation, as described in *Re Lang Michener* are present in the current case. In particular:

> *The bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding*:
>
> (i) Mr. Callow has been litigating and re-litigating the Determined Matters for nearly thirty 30 years. He has initiated more than 20 proceedings about the same issues that are *res judicata*.
>
> (ii) This fact was recognized in the Maranger J. Endorsement at para. 5 dismissing Ontario Civil Action #1:
>
> > Mr. Callow's claims have been litigated and re-litigated over the last 27 years, this case falls squarely within the wording of the Court of Appeal's decision of *Currie v. Halton Regional Police Services Board* 2003 O.J. No. 4516, 233 D.L.R. (4th) 657 at paragraph 17 where the Court defined a frivolous, vexatious and abusive litigant… [Emphasis added.]
>
> (iii) This fact has also been recognized by the Ontario Divisional Court Endorsement at para. 5 upholding the Maranger J. Endorsement in Ontario Action #1:
>
> > We agree that the claim does not disclose a cause of action. As described in the reasons of the motion judge, the claim is essentially a critique of prior decisions of various levels of the British Columbia courts, most specifically, a decision of the BCSC declaring the appellant a vexatious litigant.

# Court of Queen's Bench of Alberta

**Citation: Lee v Canada (Attorney General), 2018 ABQB 40**

**Date:** 20180117
**Docket:** 1703 18745
**Registry:** Edmonton



Between:

**John Mark Lee Jr.**

Applicant

- and -

**Attorney General of Canada and Parole Board of Canada**

Respondents

---

**Memorandum of Decision**
**of the**
**Honourable Madam Justice D.L. Shelley**

---

c) public records that are a basis for judicial notice (***Wong v Giannacopoulos***, 2011 ABCA 277 at para 6, 515 AR 58); and

3. whether the person has previously engaged in abusive litigation conduct and/or was declared a "vexatious litigant" or subject to court access restrictions: ***Canada Post Corp v Varma***, at para 24.

[247] Not all indicia and forms of litigation abuse are equal. For example, abuse of the *habeas corpus* procedure is a particularly serious form of litigation misconduct since that exploits a procedure that grants *habeas corpus* applications priority over other court litigation, which has a highly disruptive effect: ***Ewanchuk v Canada (Attorney General)***, at paras 170-87; ***Re Gauthier***, 2017 ABQB 555 at para 82. Associate Chief Justice Rooke in the latter decision wrote:

> ... abuse of habeas corpus is a special aggravating factor. If that appears in a history of vexatious litigation then stricter court access control is warranted.

[248] That evidentiary foundation is then the basis to evaluate whether future abuse of court processes is foreseeable for the potentially problematic litigant. For example, Slatter JA recently indicated that, where a problematic litigant promises further abuse of court processes, that is an important element when evaluating possible court access restrictions: ***Lofstrom v Radke***, 2017 ABCA 362 at para 8.

[249] When a Court exercises its inherent jurisdiction to determine whether court access restrictions are appropriate, the critical questions are identified in ***Hok v Alberta***, 2016 ABQB 651 at para 36, 273 ACWS (3d) 533, leave denied 2017 ABCA 63, leave to appeal to SCC refused, 37624 (2 November 2017):

> I conclude that when a court considers limits to future court access by a person with a history of litigation misconduct the key questions for a court are:
>
> 1. Can the court determine the identity or type of persons who are likely to be the target of future abusive litigation?
> 2. What litigation subject or subjects are likely involved in that abuse of court processes?
> 3. In what forums will that abuse occur?

[250] Many of the ***Chutskoff v Bonora*** "indicia" have emerged in Lee's *habeas corpus* proceeding and other litigation.

### A. Collateral Attacks

[251] A collateral attack is a court action which raises grounds or issues already determined, or which is intended to circumvent the effect of a court or tribunal order. As I have previously indicated, Mr. Lee's current *habeas corpus* action is a global collateral attack on the Parole Board of Canada's decisions which rejected his applications for day and full parole.

[252] I also view the ***Lee v Blondin*** action as a kind of collateral attack, in that Mr. Lee is prohibited from contacting the relatives of his murder victim. Mr. Lee explained to me he needed a substitutional service court order to work around that restriction. Similarly, in ***Lee v Gallant*** (9 February 2015), Vancouver T-2113-14 (FC) Prothonotary Lafreniere (as he then was) concluded Lee's action included complaints which were simply improper collateral attacks on decisions of

Correctional Service Canada officials. Parallel conclusions were reached in ***Lee v Commissioner of Corrections and Warden of Bowden Prison*** (10 March 2015), Vancouver T-2367-14 (FC).

[253] Mr. Lee's other litigation history provides more examples. In ***Lee v Attorney General of Canada***, 2011 ONSC 2490 Mr. Lee tried to employ *habeas corpus* to quash offender grievance procedures and judicial review by the Federal Court. The Ontario Court had no such jurisdiction.

**B. Hopeless Proceedings**

[254] Mr. Lee's current *habeas corpus* application was hopeless. His attempts to use *habeas corpus* to challenge the Parole Board of Canada were obviously going to fail. That question of law could not be more settled, and I find that Mr. Lee knew that. He has also sought ancillary relief that is not possible.

[255] This is only one of a number of meritless *habeas corpus* applications, including a previous action before this court: ***Lee v Warden of Bowden Institution*** (30 June 2016), Edmonton 160598918X1 (Alta QB), and the application documented in ***Lee v Attorney General of Canada***, 2011 ONSC 2490. The Court in ***Lee v Attorney General of Canada***, 2011 ONSC 2490 observes at para 15 that Mr. Lee sought "a blanket Order" that "cannot be granted in a vacuum" and other remedies only available from the Federal Court and National Parole Board Appeal Division: paras 24-25, 34. All remedies sought were therefore refused.

[256] Similarly, in ***Lee v Her Majesty the Queen***, Toronto M40909 (Ont CA) Mr. Lee advanced a variation on his 'no risk' concept and argued for *habeas corpus* as a mechanism to order transfer to lower restriction conditions, which is not a result available under *habeas corpus*.

[257] Prothonotary Larfreniere concluded Mr. Lee's ***Lee v Gallant*** action was hopeless on multiple bases, including that:

> No material facts, other than a conclusion, have been pleaded ... There simply is no information about the "who, what, when and how".

The Prothonotary struck out Mr. Lee's ***Lee v Commissioner of Corrections and Warden of Bowden Prison*** action because it was composed of allegations that "... lack cohesion and are almost incomprehensible". The matter was procedurally incorrect, "fatally flawed and accordingly bereft of any possibility of success. ...". That action was an abuse of process.

[258] Much other litigation by Mr. Lee has either been hopeless or abandoned. For example, the Endorsement of O'Connell J dated September 26, 2017 found Mr. Lee had no reasonable cause of action in 11 separate Ontario Superior Court of Justice actions which involve many defendants. Justice O'Connell repeatedly concluded these lawsuits were improper, frivolous, and vexatious. For example in relation to File #75/12 he says:

> I agree that the claim should be struck. It is sweeping in its breath, completely generalized and does not allow the reader to identify the defendants at whom it is aimed.

[259] An interesting aspect of these lawsuits is Mr. Lee frequently sought punitive damages, despite the fact he had no action at all. Seeking relief that is unwarranted or grossly disproportionate to any plausible remedy is an indicium of abusive litigation. Another example of disproportionate relief is Mr. Lee in File #85/12 claiming general damages of $20,000.00 that then increment on a daily basis by another $100.00 for alleged mismanagement of the "healing of the plaintiffs".

December 21, 2018

# Court of Queen's Bench Requires Vexatious Litigant to Seek Court's Permission Before Accessing Any Non-Judicial Body

**By:** Jonnette Watson Hamilton

**Case Commented On:** *Makis v Alberta Health Services,* 2018 ABQB 976

In many written decisions rendered over the past two years, some judges of the Court of Queen's Bench of Alberta have been rather disdainful of the vexatious litigant procedures added to the *Judicature Act*, RSA 2000, c J-2 in 2007, referring to them, for example, as "obsolete and inferior" (*Gagnon v Shoppers Drug Mart*, 2018 ABQB 888 at para 14). Although the *Judicature Act* procedures continue to be used in rare cases (e.g. *HRMT v SNS*, 2018 ABQB 843 at para 102), the Court usually makes it clear that it prefers its own two-step "modern" process – introduced in *Hok v Alberta*, 2016 ABQB 651 – which they justify as an exercise of a superior court's inherent jurisdiction. The use of their inherent jurisdiction is said to provide "a more robust, functional, and efficient response to control of problematic litigants" (*Templanza v Ford*, 2018 ABQB 168 at para 103; *Hill v Bundon*, 2018 ABQB 506 at para 53). The *Judicature Act* procedure requires "persistent" bad behavior by a litigant before that litigant's access to the courts can be restricted (s 23(2)), usually by requiring the litigant to obtain the court's permission before starting a new court action. The Court of Queen's Bench does not want to wait for persistent vexatious conduct (*Templanza* at para 101; *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548 at paras 49-50). The legislated procedure also requires notice to the Minister of Justice and Solicitor General (s 23.1(1)), who has a right to appear and be heard in person (s. 23.1(3)), a requirement that suggests how seriously our elected representatives saw restrictions on court access when they added the vexatious litigant procedures to the *Act* in 2007. The court-fashioned process does not usually require notice to anyone except the person about to be found to be a vexatious litigant, and it has become a written-submissions-only process – no one has the right to appear and be heard in person. The usual restrictions on court access are now characterized as a "very modest imposition" (*Knutson (Re)*, 2018 ABQB 858 at para 42). As this brief summary suggests, the changes made to this area of the law over the past two years have been fairly dramatic. But the Court of Queens' Bench has now pushed the envelope, extending their inherent jurisdiction even further. In *Makis v Alberta Health Services,* their inherent jurisdiction is used to control access by a litigant found to be vexatious to non-judicial bodies, i.e. administrative tribunals and other statutory decision-makers.

Administrative law scholars and practitioners might very well be looking at least a little askance at this point. But it is true. The order issued in this case requires Dr. Makis to get the permission of the Court of Queens' Bench before he can commence, attempt to commence, or continue any complaint, investigation, proceeding or appeal "with any non-judicial body" if that complaint is related to matters alleged in any of the three actions that were pending before the Court (at para 89). Those actions include Dr. Makis' wrongful employment termination action, a judicial

review of a decision of the College of Physicians and Surgeons of Alberta (CPSA) on Dr. Makis' complaints about another physician, and a third, broader action by Dr. Makis against several physicians, their professional corporations and the University of Alberta based on conspiracy to undermine his professional career, breach of contract, negligence and misfeasance in public office (at para 3). The first two of these actions are described by Justice Clackson as "having some prospect of success" (at para 78).

The order is limited as to the subject matter of new proceedings, but not as to the forum – *any non-judicial body* is within the order's scope (paras 89-90). If requesting the leave of the Court to commence a proceeding related to any of the proscribed issues before a non-judicial body, notice must be given to the Defendants in this action – Alberta Health Services (AHS) and the CPSA – and to any individual named in the proceeding for which leave is sought (at para 89). The court costs of this application awarded to AHS and CPSA must also be paid before permission can be sought (at para 88). The same need for permission applies to beginning appeals or proceedings before the Court of Queen's Bench or the Provincial Court (at para 89). Justice Clackson acknowledged that restricting Dr. Makis' non-court activities was an "unusual step" (at paras 4, 34). He also acknowledged that it would be a "new" step for the court (at para 35).

The applicants, AHS and CPSA, sought a court order to "manage" Dr. Makis' access to the courts and a number of tribunals and professional organizations (at paras 1, 22). They did not ask the court to limit Dr. Makis' ongoing Queen's Bench actions, but they did ask the court to stop his ongoing extra-judicial activities (at para 27). Those said to need protection from Dr. Makis' extrajudicial activities included not only AHS and the CPSA, but also the Edmonton Police Service, RCMP, AHS Ethics and Compliance Office, Alberta Human Rights Office, Alberta Public Interest Commissioner, Minister of Health, University of Alberta, Office of the Information and Privacy Commissioner, and any other body which Dr. Makis might contact in the future (at para 82).

The type of relief sought by AHS and the CPSA and their views on the source of the court's power to award that type of relief are not that clear. Justice Clackson noted that ordinarily someone seeking relief from unfair behavior would seek injunctive relief (at para 58). Later, however, he stated that the application did not clearly state that AHS and CPSA sought to enjoin Dr. Makis, although "that is one way to characterize what is being sought" (at para 84). He seems to absolve the parties of the need to actually seek an injunction for themselves and others, under the rules of law that apply to injunctive relief, because "where the court finds that someone has acted vexatiously and is likely to continue to do so, surely protecting those who may plausibly be abused should follow as a matter of course without the need for separate applications" (at para 58). Justice Clarkson concluded that "in effect" the applicants were arguing that once a litigant was found to be vexatious "they need not individually seeking an injunction nor provide undertakings as to damages" because "vexatiousness justifies access restrictions for all future actions of the vexatious litigant…[that] relate to the subjects that underpin the vexatious behaviors" (at para 85). Dispensing with the need to apply for injunctive relief is justified on the basis of "avoiding costs, formality and multiple applications" – all goals attributed to the "culture shift" heralded by *Hryniak v. Mauldin*, 2014 SCC 7.

Apparently, AHS and CPSA argued that it was within the court's inherent jurisdiction to bar Dr. Makis' access to entities other than the Alberta courts (at para 34). In assessing this argument, Justice Clackson reviewed the case law about the scope and extent of a superior court's inherent jurisdiction. It seems to have been accepted in Alberta since the *Hok* decision in 2016 that superior courts have inherent jurisdiction to control not only the court action and processes before them, but also court actions and processes that might be brought in the future (at paras 37-45).

I am not going to rehash that point, except to suggest that more care be taken with the justifications for extending the court's self-policed powers. For example, Justice Clackson relied upon the two usually-relied-upon English cases to say that the UK Court of Appeal had concluded "on the basis of historical research, that UK courts have always had an authority to use misconduct in one matter as a basis to conclude that court access restrictions may be imposed on other and future litigation" (at para 41). Those two cases are *Ebert v Birch*, [1999] EWCA Civ 3043, [1999] 3 WLR 670 (UKCA) and *Bhamjee v Forsdick* (No 2), [2003] EWCA Civ 1113 (UKCA). In deciding whether a court could prohibit new proceedings without leave and proceedings in other courts, Lord Woolf in *Ebert v Birch* looked at an incomplete list of vexatious litigant orders maintained by Court Services (at 678G WLR). He noted there were at least six orders which restrained new proceedings, all made between 1880 and 1894. He cautioned that there was nothing to suggest that the question of the extent of the inherent jurisdiction of the court had been argued in any of those cases (at 679A). Due to the lack of full argument, Lord Woolf indicated that he did not regard the historical research as conclusive (at 679F). This does not seem to support Justice Clackson's assertion that the UK Court of Appeal concluded "on the basis of historical research, that UK courts have always had an authority" to impose access restrictions on future litigation. Lord Woolf indicated he preferred to approach the issue on the basis of principle (at 679F).

The main issue in this case – the "unusual" and "new" issue – should have been the extension of that inherent jurisdiction courts to non-judicial bodies. Justice Clackson described this issue as whether "a superior court of inherent jurisdiction has the authority to respond to any justiciable issue, provided that authority has not been allocated by legislation to a different body" (at para 36). He does discuss a superior court's inherent jurisdiction to respond to any justiciable issue, but he does not canvass the authority allocated to the AHS or the CPSA, or to the Edmonton Police Service, the Minister of Health, or any of the other non-judicial bodies for whom the AHS and CPSA sought the court's protection. He does note that the Ontario government has, through legislation, provided some of its statutory decision-makers with the power to make vexatious litigant orders that require prior permission for commencing future proceedings (at paras 48-49), and that there is no equivalent authority granted by the legislature to Alberta tribunals (at para 50). The "gap" is seen as a reason for the court to act (at para 50). Justice Clackson does not say what legislation was examined, but perhaps the *Administrative Procedures and Jurisdiction Act*, RSA 2000, c A-3, was what was being referred to here. Or perhaps all primary and subordinate legislation applicable to all of the non-judicial bodies in Alberta – every decision-maker to which the order applied – was examined and found lacking.

On the main issue of the extension of the court's inherent jurisdiction from courts to non-judicial bodies, Justice Clackson makes a number of points, all in short order and without much

elaboration. He begins by stating that the "intrinsic power" that he relied upon is the power of a superior court of inherent jurisdiction that exercises "general jurisdiction over all matters of a civil and criminal nature" (at para 46). The basic idea was that, where there is a right, there must be a court which can enforce that right and provide a remedy (at paras 46-47). Exactly what right requires a remedy in this context, or whose right it is, was not stated.

Justice Clackson also relied upon a number of precedents. For example, he relied upon (at para 53) *Hok*'s description of the Quebec Court of Appeal's decision in *Production Pixcom inc v Fabrikant*, 2005 QCCA 703 (at paras 22-23) as stating that a court's inherent jurisdiction "extends to provide superior courts the authority to shelter tribunals and other bodies that are unable to control vexatious litigants" (at para 18 in *Hok*). However, there is no discussion in *Hok* or by Justice Clackson about the Quebec Court of Appeals' "in any case" reliance on article 46 of the *Code of Civil Procedure*, CQLR c C-25. Does that legislative context matter? Additionally, nothing is made of the way the Court of Appeal stated its conclusion (at para 23), which was to say that "for other courts or tribunals which are not so empowered, the Superior Court may *enjoin* a vexatious litigant from introducing proceedings …. In such case one can speak of *an injunctive remedy* …". (at para 23, emphasis added).

Justice Clarkson also mentioned (at para 54) a decision of the Prince Edward Court of Appeal: *Ayangma v Canada Health Infoway*, 2017 PECA 13 (at para 62-63) as identifying this broader authority for superior courts. However, that Court of Appeal determined that a ban on commencing new proceedings in the provincial Human Rights Commission was not required (at para 65). As a result, that Court of Appeal merely cited *Production Pixcom inc v Fabrikant* and *Nursing and Midwifery Council v Harrold,* [2015] EWHC 2254 (QB) for extending restraints to tribunal proceedings (at para 62), without discussing them at all. To use the latter case, the role of Rule 3.11 of the *Civil Procedure Rules* 1998/3132 would have to be disentangled from the inherent jurisdiction points. Rule 3.11 introduced a civil restraint order regime that put the inherent jurisdiction powers of the High Court to prevent abuse of its process on a statutory basis.

None of the cases cited by Justice Clackson are binding. Whether any of them are persuasive depends upon whether their reasoning, in their legislative context, is persuasive in the Alberta context. No Alberta vexatious litigant case has yet made this type of reasoned argument to say that they are.

The next rationales advanced for extending the court's inherent jurisdiction (at paras 57-60) are the points about "no need to apply for an injunction" that I have already mentioned. As well, we find quotations from *Canada v Olumide*, 2017 FCA 42 (at paras 17-20) about the misconduct of vexatious litigants who "squander … community property" and "gobble up scarce resources." Justice Clackson next mentions, as a justification for extending the court's inherent jurisdiction, that the substantive effect of restricting access without leave is "very limited" (at para 55). He does not consider whether the impact of requiring an application to a court for leave to commence proceedings in a non-judicial body may be greater than when leave is sought to commence proceedings in the same court. He mentions instead (at para 56) that "while access to the courts is a fundamental right, there is no commensurate right of access to the various bodies" that Dr. Makis' had accessed (such as, presumably, the RCMP, the Alberta Human Rights

Office, the Alberta Public Interest Commissioner, the Office of the Information and Privacy Commissioner, etc).

Justice Clackson's next rationale for not requiring AHS or CPSA to apply for injunctive relief was that to require abused persons or bodies to do so "could itself be a tool of abuse in the hands of the vexatious litigant" (at para 61). Here Justice Clackson asks us to imagine "a vexatious unrepresented litigant" that launches "all kinds of spurious claims just to force his victims to the expense and *public humiliation* of seeking relief" (at para 61, emphasis added). Why asking the court for an injunction involves "public humiliation" is not specified.

Justice Clackson's final reason is based on what he identifies as the "sound policy" of managing vexatious litigants' access to tribunals even when one cannot identify which tribunals require protection (at para 62). He implores us: "Surely, if harm can be prevented at a reasonable cost, it behooves the court to do so" (at para 62). He saw it as "my obligation to protect those who have and those who may continue to have and those who have not yet suffered, but may suffer from Dr. Makis' abuse of the non-court processes" (at para 87).

These various rationales are each advanced very briefly, and sometimes only for their rhetorical impact. There is no in-depth reasoning about whether and why an Alberta superior court should extend its inherent jurisdiction to control access to non-judicial bodies.

The issue in this case deserves better. It effectively makes administrative tribunals accountable to the Court of Queen's Bench for who and what those tribunals will hear. My administrative law colleagues confirm that this is "odd" because non-judicial bodies are delegates of the legislature and take their directions from that branch of government, normally by way of statutes and regulations prescribing their authority. The order here will have the tribunals looking to the Court for direction on what matters and who they hear, rather than to the legislature. This seems wrong in principle. While judicial review does or at least can impose accountability on administrative tribunals, that accountability is usually imposed *ex post facto*, i.e., after the tribunal has acted. The ability of an administrative tribunal to decide what matters and which cases to hear – to be master of its own procedure – will vary with the empowering statute, but Justice Clackson's order appears to ignore any such statutory powers. His order also lacks a basis in a statute (as there is no such jurisdiction over non-judicial bodies in the *Judicature Act*; see *Calgary (City) v Manyluk*, 2012 ABQB 178 at para 88), procedural fairness, or some constitutional ground.

As Lord Woolf said in *Eberts v Birch* (at 680D), when it comes to a major question about the extension of the superior court's authority, there is something to be said for "waiting for intervention either in the form of primary legislation or in the form of rules of court".

*I would like to acknowledge the input of my colleagues Shaun Fluker, Nigel Bankes, Martin Olszynski, and Howie Kislowicz, while at the same time absolving them of any responsibility for any errors.*

This post may be cited as: Jonnette Watson Hamilton, “Court of Queen’s Bench Requires Vexatious Litigant to Seek Court’s Permission Before Accessing Any Non-Judicial Body” (December 21, 2018), online: ABlawg, http://ablawg.ca/wp-content/uploads/2018/12/Blog_JWH_Makis_v_Alberta_Health_Services_December2018.pdf

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