COURT FILE NUMBER	1103 14112
COURT:	COURT OF QUEEN'S BENCH OF ALBERTA
JUDICIAL CENTRE:	EDMONTON
	IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c T-8, AS AMENDED IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND, NO 19 now known as SAWRIDGE FIRST NATION ON APRIL 15, 1985
APPLICANTS:	ROLAND TWINN, CATHERINE TWINN, WALTER FELIX TWIN, BERTHA L'HIRONDELLE and CLARA MIDBO, as Trustees for the 1985 Sawridge Trust
DOCUMENT	**WRITTEN SUBMISSIONS OF THE SAWRIDGE FIRST NATION ON MAURICE STONEY'S POTENTIAL VEXATIOUS LITIGANT STATUS**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	PARLEE McLAWS LLP 1700 Enbridge Centre 10175 – 101 Street NW Edmonton, AB T5J 0H3 **Attention**: Edward H. Molstad, Q.C. Telephone: (780) 423-8500 Facsimile: (780) 423-2870 **File Number**: 64203-7/EHM

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I. INTRODUCTION

1. On July 12, 2017, this Honourable Court issued a written case management decision in *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 436 ("***Sawridge #6***"), wherein it granted the Application by Sawridge First Nation ("**Sawridge**") to intervene in the Application by Maurice Felix Stoney ("**Maurice Stoney**") and his brothers and sisters (collectively, "**the Stoney Applicants**") to be added a parties to the within Action (the "**Stoney Application**") and struck out the Stoney Application in its entirety under Rule 3.68 with solicitor and own client indemnity costs awarded to Sawridge and the Sawridge Trustees. This Honourable Court found that the Stoney Application was inappropriate, devoid of merit, and abusive in a manner exhibiting the hallmark characteristics of vexatious litigation and that it amounted to serious litigation misconduct.

2. In *Sawridge #6*, this Honourable Court, of its own motion, imposed an Interim Court Filing Restriction Order for Maurice Stoney and directed that Maurice Stoney make written submissions by August 4, 2017 on whether his access to Alberta courts should be restricted and, if so, what the scope of that restriction should be. This Honourable Court further directed that Sawridge and the Sawridge Trustees may make written submissions on Maurice Stoney's potential vexatious litigant status and introduce additional evidence that is relevant to this question by July 28, 2017.

3. Sawridge will not be adducing any additional evidence on the issue of Maurice Stoney's litigant status; however, by way of these written submissions, Sawridge submits that this Honourable Court should declare Maurice Stoney a vexatious litigant and restrict his access to Alberta courts.

4. In support of its position, Sawridge relies not only upon this Honourable Court's inherent jurisdiction to control litigation abuse, but also upon sections 23 and 23.1 of the *Judicature Act*, RSA 2000, c J-2, which provides this Court with additional authority to control vexatious litigants. In accordance with section 23.1 and with the permission of this Honourable Court, Sawridge notified The Minister of Justice and Solicitor General of Alberta of the Interim Court Filing Restriction Order for Maurice Stoney and the Court's direction concerning the filing of additional evidence and written submissions.

5. These submissions are intended to supplement the evidence and written submissions filed by Sawridge in relation to the issues considered in *Sawridge #6*, to the extent that those prior submissions have already highlighted the vexatious and abusive nature of Maurice Stoney's litigation against Sawridge. For sake of clarity, the evidence and prior submissions of Sawridge relied upon include:

   (a) The Affidavit of Chief Roland Twinn, sworn on September 21, 2016 and filed on September 28, 2016 (the "**Twinn Affidavit**").

   (b) The Written Submissions of Sawridge filed September 28, 2016 in support of the Sawridge Application to be added as an intervenor and in response to the Stoney Application (the "**September 28, 2016 Sawridge Submissions**").

   (c) The Written Submissions of Sawridge in response to the Application by the Stoney Applicants to be added as parties or intervenors filed October 31, 2016 (the "**October 31, 2016 Sawridge Submissions**").

   (d) The Reply of Sawridge to the Stoney Applicants' Response to Sawridge's Application to Intervene in the Stoney Application filed November 14, 2016 (the "**November 14, 2016 Sawridge Submissions**").

II. FACTS

6. The Stoney Application, which was at the centre of *Sawridge* #6, was merely the latest installment in a set of related actions growing from a dispute over Maurice Stoney's alleged entitlement to membership in Sawridge. As such, a historical review of Maurice Stoney's claim to membership in Sawridge is necessary to place the Stoney Application in context and in order to truly appreciate the abusive and vexatious nature of his persistent attempts to litigate this previously settled issue.

7. In 1944, William Stoney, the father of Maurice Stoney voluntarily gave up his Indian status and was enfranchised. As a result, William's family (including his wife and their two sons, Maurice and Alvin) were enfranchised and were consequently no longer members of Sawridge.

Twinn Affidavit, at paras 5, 31 and 32

8. Bill C-31 was enacted by the Federal Government on April 17, 1985. It gave Maurice Stoney the right to have his Indian status restored but did not give him any rights in relation to membership in Sawridge. At most, he was able to apply for membership in Sawridge.

Twinn Affidavit, at paras 6 and 7

9. Maurice Stoney, along with others, filed a claim in the Federal Court against Sawridge in 1995 wherein they sought damages related to Sawridge's decision not to grant them membership following the enactment of Bill C-31 (the "**1995 Action**"). Maurice Stoney and the other Plaintiffs also sought an Order that their names be added to the Sawridge's membership list.

Twinn Affidavit, at paras 8 - 10

10. In the 1995 Action the Plaintiffs brought an Application to amend their Statement of Claim to include a request for a declaration that Sawridge's membership rules were discriminatory and exclusionary and were, accordingly, invalid. The Application was initially granted, but that decision was appealed by Sawridge to the Federal Court of Appeal.

Twinn Affidavit, at paras 11 and 12

11. On June 13, 2000, the Federal Court of Appeal delivered its decision regarding Sawridge's Appeal. It agreed with Sawridge and allowed the appeal of the decision amending the Statement of Claim with costs payable to Sawridge for both the initial application and the appeal.

Huzar v Canada, 2000 CanLII 15589 (FCA) at para 6 (Tab 1 of the September 28, 2016 Sawridge Submissions)
Twinn Affidavit, at para 29

12. One of the arguments that was raised during the 1995 Action was that the plaintiffs were entitled to membership in Sawridge as a result of Bill C-31. Specifically, it was argued that Bill C-31 invalidated Sawridge's membership rules, and that accordingly, Maurice Stoney and the other plaintiffs were entitled to membership. In response to that argument, the Federal Court of Appeal noted as follows:

> It was conceded by counsel for the respondents that, without the proposed amending paragraphs, the unamended statement of claim discloses no reasonable cause of action in so far as it asserts or assumes that the respondents are entitled to Band membership without the consent of the Band.
>
> It is clear that, until the Band"s membership rules are found to be invalid, they govern membership of the Band and that the respondents have, at best, a right to apply to the Band for membership. Accordingly, the statement of claim against the appellants, Walter Patrick Twinn, as Chief of the Sawridge Indian Band, and the Sawridge Indian Band, will be struck as disclosing no reasonable cause of action.

Huzar v Canada, (FCA), at paras 4-5 (Tab 1 of the September 28, 2016 Sawridge Submissions)

13. Maurice Stoney was represented by legal counsel in the 1995 Action and it was conceded by his legal counsel and found by the Federal Court of Appeal that Maurice Stoney did not have an acquired right to be a member of Sawridge.

14. Maurice Stoney's next step in relation to his claim for membership in Sawridge was to complete a membership application pursuant to Sawridge's membership rules. His completed application for membership was submitted on August 30, 2011. Contrary to the assertions made in Maurice Stoney's Affidavit filed in support of the Stoney Application, that application was never ignored.

Twinn Affidavit, at paras 15 and 16

15. Maurice Stoney's application for membership was denied on or around December 7, 2011. According to the letter that was sent to Maurice Stoney enclosing Sawridge's decision, his application was rejected (i) because he did not have any specific right to membership, and (ii) because Sawridge's Council did not consider that his admission would be in the best interests and welfare of Sawridge and as a result did not see any reason to exercise its discretion under its membership rules to admit him as a member.

Twinn Affidavit, at para 16

Stoney Affidavit, at Exhibit "L"

16. This was yet another decision where it found that Maurice Stoney did not have any specific right (acquired right) to membership in Sawridge.

17. In accordance with Sawridge's membership rules and its Constitution, Maurice Stoney appealed the decision regarding his membership to Sawridge's Appeal Committee. The hearing of that appeal occurred on April 21, 2012. The committee which was made up of the electors of Sawridge upheld the initial decision to deny the application for membership.

Twinn Affidavit, at para 17

18. At the hearing before the Sawridge Appeal Committee, Maurice Stoney was represented by his current legal counsel, Ms. Priscilla Kennedy (then of Davis LLP).

Twinn Affidavit, Exhibit 2, Tab Y

19. The decision of the Appeal Committee was unanimous in their finding that there were no grounds to set aside the decision of the Sawridge Chief and Council.

Twinn Affidavit, Exhibit 2, Tab Y

20. Maurice Stoney then brought an application in the Federal Court of Canada for judicial review of the decision to deny him membership. That application was filed on May 11, 2012 (the "**2012 Action**").

Twinn Affidavit, at para 18

21. As part of the 2012 Action, Maurice Stoney advanced a number of grounds which he alleged were cause to overturn the decision to deny him membership. Those grounds are listed in Maurice Stoney's Notice of Application that was filed with the Federal Court. They included his alleged right to membership as a result of the enactment of Bill C-31.

Notice of Application, Federal Court Action No. T-923-12
(Tab 2 of the September 28, 2016 Sawridge Submissions)

22. Maurice Stoney swore an Affidavit as part of the 2012 Action. In that Affidavit, he alleged (much like in the Affidavit sworn in support of the Stoney Application) that he was entitled to automatic membership in Sawridge as a result of the enactment of Bill C-31.

Affidavit of Maurice Felix Stoney, sworn May 22, 2012, Federal Court Action No. T-923-12, at para 8 (Tab 3 of the September 28, 2016 Sawridge Submissions)

23. Chief Roland Twinn swore an Affidavit on June 26, 2012, in response to the Affidavit sworn by Maurice Stoney in the 2012 Action. In his Affidavit, Chief Twinn affirmed, *inter alia*, the following:

(a) Sawridge did not receive a completed membership application from Maurice Stoney until August 30, 2011;

(b) Sawridge's decision to deny Maurice Stoney's application for membership was based on a consideration of a number of records, including his completed membership application, historical documents, and media articles;

(c) Maurice Stoney was given the ability to make both written and oral submissions to Sawridge's Appeal Committee, both of which were done by his counsel; and

(d) Maurice Stoney's father (and as a result his whole family) voluntarily enfranchised in 1944.

Twinn Affidavit, at para 19 and at Exhibit "2" at paras 2, 3, 8, 11, 12, and 18

24. Maurice Stoney's application for judicial review in the 2012 Action proceeded on March 5, 2013, before Justice Barnes of the Federal Court (Trial Division). Justice Barnes dismissed Maurice's application, and awarded costs to Sawridge.

Stoney v Sawridge First Nation, 2013 FC 509 (Tab 4 of the September 28, 2016 Sawridge Submissions)

25. In his written reasons, Justice Barnes engaged in a thorough analysis of Maurice Stoney's argument regarding his entitlement to membership under Bill C-31. He found that Bill C-31 did not provide Maurice Stoney with an automatic right to membership in Sawridge. Rather, Justice Barnes noted that Maurice Stoney lost his right to membership when his father obtained enfranchisement for the entire Stoney family:

> I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation.

Stoney v Sawridge First Nation, 2013 FC 509, at paras 11-15
(Tab 4 of the September 28, 2016 Sawridge Submissions)

26. Additionally, Justice Barnes wrote that the judicial review application that was the subject matter of the 2012 Action was an attempt by Maurice Stoney to re-litigate the matters that were in issue in the 1995 Action, being his entitlement to membership as a result of Bill C-31. Justice Barnes accordingly concluded that the arguments related to Bill C-31 were barred under the doctrine of issue estoppel.

Stoney v Sawridge First Nation, 2013 FC 509, at para 17
(Tab 4 of the September 28, 2016 Sawridge Submissions)

27. Maurice Stoney was represented by his current legal counsel, Ms. Priscilla Kennedy (then of Davis LLP) in the 2012 Action.

Stoney v Sawridge First Nation, 2013 FC 509
(Tab 4 of the September 28, 2016 Sawridge Submissions)

28. Following the issuing of Justice Barnes' reasons in the 2012 Action, Sawridge proceeded to take steps to assess the costs that were payable by Maurice. A Federal Court Assessment Officer determined that Sawridge was entitled to $2,995.65 in costs. These costs have never been paid.

Twinn Affidavit, at paras 22 and 29

29. As noted by this Court, at the time that Justice Barnes issued his decision in the 2012 Action and it was not appealed, Maurice Stoney's avenue for standing in the within Action was closed and the question of his membership in Sawridge was *res judicata*.

30. Nevertheless, on January 31, 2014, Maurice Stoney filed a complaint with the Canadian Human Rights Commission ("**CHRC**") regarding Sawridge's decision to deny him membership (the "**CHRC Complaint**"). Much like in both the 1995 Action and the 2012 Action, Maurice Stoney's complaint was based on an allegation that Sawridge's decision to deny his membership was discriminatory.

Twinn Affidavit, at para 24

31. The Deputy Chief Commissioner of the CHRC issued a decision regarding the complaint by Maurice Stoney on April 15, 2015. The Deputy Chief Commissioner refused to

address the complaint, as the subject matter of the complaint had already been dealt with as part of the 1995 Action and the 2012 Action:

> The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against the respondent [Sawridge] which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e., the respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in his application for judicial review when he alleged that the decision violated the Charter; however, he did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in *Figliola* held that human rights commissions must respect the finality of decisions made by other administrative decision-makers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal with this complaint.

Record of Decision re: File 20140008, dated April 15, 2015; *Twinn Affidavit*, at Exhibit "5"

32. Most recently, Maurice Stoney attempted to become involved in this Action in late 2015. Specifically, he attempted to file an appeal of a case management decision made by Justice D.R.G. Thomas, being *1985 Sawridge Trust v Alberta (Public Trustee)*, 2015 ABQB 799 ("***Sawridge #3***"). Maurice Stoney was not a party to this Action at that time. In light of the fact that Maurice Stoney's counsel had failed to file a Civil Notice of Appeal within the requisite time under the *Rules of Court*, Maurice Stoney brought an application to extend the time for him to file an appeal of *Sawridge #3*. That application was heard by Justice J. Watson of the Court of Appeal on February 17, 2016.

Stoney v 1985 Sawridge Trust, 2016 ABCA 51 (Tab 5 of the September 28, 2016 Sawridge Submissions)

33. Maurice Stoney was represented his current counsel, Ms. Priscilla Kennedy of DLA Piper (Canada) LLP in the Application to the Court of Appeal before Mr. Justice J. Watson.

Stoney v 1985 Sawridge Trust, 2016 ABCA 51 (Tab 5 of the September 28, 2016 Sawridge Submissions)

34. On February 26, 2016, Justice Watson issued his reasons for decision regarding Maurice Stoney's application. He dismissed the application and awarded costs to the parties that participated in that application, which included Sawridge.

Stoney v 1985 Sawridge Trust, 2016 ABCA 51, at paras 23-24
(Tab 5 of the September 28, 2016 Sawridge Submissions)

35. In his written reasons, Justice Watson provided an overview of the basis of Maurice Stoney's argument that he should participate in this Action:

> The application before me now is by a gentleman named Maurice Stoney. Mr. Stoney claims, with some vigour, that he is a member of the First Nation in question and that he has been for a long time, and that as a member of the First Nation, certain legal rights of his follow from this.
>
> [...] As mentioned, Mr. Stoney's position is that he is a member of the Sawridge First Nation and that as a consequence of that he presumably has a right to some share in the distribution of the trust when that is eventually carried out.

Stoney v 1985 Sawridge Trust, 2016 ABCA 51, at paras 2 and 3
(Tab 5 of the September 28, 2016 Sawridge Submissions)

36. With regards to Maurice Stoney's allegations regarding his membership in Sawridge, Justice Watson did not make any findings regarding same, but he did note the following:

> It therefore follows that in terms of determining reasonable chance of success in the appeal, the embargo against the participation of Mr. Stoney that is or has been created by the various proceedings that have occurred in various courts including the Federal Court as raised by the First Nation, has an enhanced status for the purposes of determining the extension of time here. That is because, on the face of things, Mr. Stoney does not have a participatory right in relation to the proceedings on the trust, does not have standing to appeal within the meaning of the case of Dreco Energy Services Ltd et al v Wenzel Downhole Tools Ltd, 2008 ABCA 36 (CanLII), 429 AR 51 at paras 5 to 8, and is, in fact, a stranger to the proceedings insofar as an appeal from the decision of Mr. Justice Thomas to the Court of Appeal is concerned. [Emphasis Added]

Stoney v 1985 Sawridge Trust, 2016 ABCA 51, at para 20
(Tab 5 of the September 28, 2016 Sawridge Submissions)

37. Pursuant to Justice Watson's decision, Sawridge prepared a Bill of Costs regarding the application. That Bill of Costs was agreed to by Maurice Stoney's counsel, Ms. Priscilla Kennedy of DLA Piper (Canada) LLP, and was filed on June 14, 2016. Pursuant to that

Bill of Costs, Maurice Stoney is required to pay Sawridge $898.70. To date, he has not paid Sawridge these costs.

Twinn Affidavit, at paras 28 and 29

38. Then, on August 12, 2016, Maurice Stoney filed the Stoney Application seeking to be added as a party to the within Action on the basis that he and his siblings are acquired rights members in Sawridge and therefore beneficiaries to the 1985 Trust. In *Sawridge #6*, this Honourable Court struck the Stoney Application under Rule 3.68 on the basis that it was inappropriate, devoid of merit, and abusive.

39. The Stoney Application and the Stoney Applicants' September 28, 2016 written submissions were based on the Affidavit of Maurice Stoney. Maurice Stoney's counsel, Ms. Priscilla Kennedy of DLA Piper (Canada) LLP, refused to permit counsel for Sawridge to attend at his Questioning on his Affidavit.

40. The transcript from that Questioning shows that Ms. Priscilla Kennedy of DLA Piper (Canada) LLP interrupted, obstructed, and refused to permit any Questioning on the substance of the Application and Affidavit. In addition, Maurice Stoney refused to answer questions and his legal counsel, Ms. Priscilla Kennedy of DLA Piper (Canada) LLP, acquiesced in his refusal.

Transcript from Questioning on Affidavit of Maurice Stoney **[TAB 1]**

41. The Stoney Applicants incorrectly and improperly asserted that the Federal Court issued an Order of Mandamus in *Sawridge Band v Canada*, [2003] 4 FCR 748, compelling Sawridge to restore the Stoney Applicants as members of Sawridge on the basis that the Stoney Applicants are "acquired rights" members under Bill C-31.

42. Maurice Stoney and his siblings are not acquired rights members of Sawridge by virtue of Bill C-31, and the order of Justice Hugessen does not apply to them. This has been plain and obvious since the decision in the 1995 Action. It was also plain and obvious that Maurice Stoney was entitled to status as an Indian by virtue of Bill C-31, but that he did

not fall within the categories of persons entitled to have his name entered on Sawridge's membership list.

43. Maurice Stoney's persistent assertion that the issue of acquired rights, and the rights of unspecified persons *including* himself and his siblings to membership in Sawridge, was determined by the Federal Court of Appeal in *Sawridge Band v. Canada*, 2004 FCA 16, [2004] 3 FCR 274 was, therefore, improper, misleading and incorrect.

44. In the judicial review application, Justice Barnes found that Maurice Stoney was attempting to re-litigate the matters that were in issue in the 1995 Action which was brought by legal counsel on behalf of Maurice Stoney and others, relating to his entitlement to membership as a result of Bill C-31. Justice Barnes concluded in the judicial review application that the arguments advanced by Maurice Stoney related to Bill C-31 were barred under the doctrine of issue estoppel.

Huzar v Canada, 2000 CarswellNat 1132 (FCA), at paras 4-5
(Tab 4 of the October 31, 2016 Sawridge Submissions)

Stoney v Sawridge First Nation, 2013 FC 509, at para 17
(Tab 3 of the October 31, 2016 Sawridge Submissions)

45. Maurice Stoney's attempt to re-litigate the membership issue in the within Action and forum was conduct that was unnecessary and unnecessarily lengthened and delayed an already lengthy action. Maurice Stoney's conduct was vexatious and an abuse of process.

46. Further, in their written submissions in support of the Stoney Application and in response to the Sawridge Application to intervene, Maurice Stoney and his counsel misstated the status of the Poitras litigation and misapplied decisions arising from that litigation in an attempt to suggest that Sawridge has repeatedly failed to comply with Justice Hugessen's Order. They also asserted that Sawridge continued to deny Ms. Poitras membership and that Sawridge continues with actions denying membership to Ms. Poitras today. These statements are false.

Transcript from the Questioning on Affidavit of Elizabeth Poitras, April 16, 2015 at 114:18 to 115:22
(Tab 8 of the November 14, 2016 Sawridge Submissions)

47. For Maurice Stoney and his legal counsel to have suggested that this was a case where Sawridge was openly applying to the Court for re-litigation of a settled issue, namely the Order of Justice Hugessen, and that Sawridge misused the judicial system such that its conduct amounts to an abuse of process is both false and in itself, constitutes an abuse of process on the part of Maurice Stoney.

48. This Honourable Court has now been determined, in *Sawridge #6*, that it was in fact Maurice Stoney and his legal counsel, and not Sawridge, who were attempting to re-litigate the finding of Justice Barnes in *Stoney v Sawridge First Nation*, 2013 FC 509, that section 11(1) of Bill C-31 and Justice Hugessen's Order do not apply to Maurice Stoney (or, by extension, his siblings).

III. ISSUES

49. The issues before this Honourable Court are as follows:

(a) Should Maurice Stoney be declared a vexatious litigant and have his access to Alberta courts restricted?

(b) If so, what should be the scope of the restriction on Maurice Stoney's access to Alberta courts?

IV. LAW

50. This Honourable Court has jurisdiction to declare Maurice Stoney a vexatious litigant, of its own motion, on either (or both) of the following bases, which co-exist:

(a) pursuant to its inherent jurisdiction to prevent abuse by control of the litigation process, and

(b) pursuant to the statutory authority to control vexatious proceedings granted to it under sections 23 and 23.1 of the *Judicature Act*.

Hok v Alberta, 2016 ABQB 651 at para 25 ["*Hok*"] **[TAB 2]**

51. As such, the non-exhaustive list of indicators of vexatious litigation set out in section 23(2) of the *Judicature Act* is relevant:

(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.

Judicature Act, RSA 2000, c J-2, s 23.1(2) [*Judicature Act*] **[TAB 3]**

52. Of further relevance is the more fulsome list of indicators of vexatious litigation set out in, *Chutskoff v Bonora*, 2014 ABQB 389, aff'd 2014 ABCA 444, the leading case on the elements and activities that define abusive litigation:

[92] This is a useful occasion then to collect and update the catalogue of established stereotypic features of vexatious litigation:

1. collateral attack:

   a) bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction: *Judicature Act*, s 23(2)(a); *Dykun v Odinshaw* at para 42;

   b) using previously raised grounds and issues improperly in subsequent proceedings: *Judicature Act*, s 23(2)(c); *Dykun v Odinshaw* at para 42;

   c) conducting a proceeding to circumvent the effect of a court order: *Stout v Track*, at paras 79-82, 84-87;

2. hopeless proceedings:

a) bringing proceedings that cannot succeed or that have no reasonable expectation to provide relief: *Judicature Act*, s 23(2)(b); *Dykun v Odinshaw* at para 42;

b) seeking forms of relief that cannot be obtained: *Fearn v Canada Customs*, at para 106; *McMeekin v Alberta (Attorney General)*, 2012 ABQB 456 at paras 196, 203, 543 AR 132; *Onischuk v Alberta*, at paras 14, 35;

c) seeking relief that is unwarranted or grossly disproportionate to any plausible remedy: *Stout v Track*, at paras 68-71; *Arabi v Alberta*, 2014 ABQB 295, at paras 101-103; *McMeekin v Alberta (Attorney General)*, 2012 ABQB 456 at paras 196, 203, 543 AR 132;

d) advancing excessive cost claims: *McMeekin v Alberta (Attorney General)*, 2012 ABQB 456 at paras 196, 203, 543 AR 132; *Arabi v Alberta* at paras 101-103;

e) advancing incomprehensible arguments and allegations: *R v Fearn*, 2014 ABQB 233 at paras 22-23;

3. escalating proceedings:

a) grounds and issues tend to roll forward into subsequent actions, repeated and supplemented (*Dykun v Odinshaw* at para 42; *McMeekin v Alberta (Attorney General)*, 2012 ABQB 456 at paras 203, 205, 543 AR 132), this factor is aggravated where this results in simultaneous active overlapping actions (*Wong v Leung*, 2010 ABQB 628 at para 16);

b) with an 'accumulative' nature where, as proceedings continue:

i) new parties are added, frequently these are lawyers: *Dykun v Odinshaw* at para 42; *Big Bear Hills Inc v Bennett Jones Alberta LLP*, 2010 ABQB 764, 507 AR 21; *McMeekin v Alberta (Attorney General)*, 2012 ABQB 456 at paras 203, 205, 543 AR 132; *Arabi v Alberta*, at para 104; or

ii) unrelated issues and subjects which were not a part of the original action are added to the litigation: this decision, see paras 110-111;

4. bringing proceedings for improper purposes (*Judicature Act*, s 23(2)(c); *Dykun v Odishaw* at para 42), including proceedings:

a) without a legal basis and intended disrupt, pre-empt, or frustrate other litigation: *R v Fearn*, 2014 ABQB 233 at para 48; *O'Neill v Deacons*, 2007 ABQB 754 at para 25, 83 Alta LR (4th) 152; *McDonald Estate (Re)*, 2013 ABQB 602 at para 44;

b) with an ulterior motive or to seek a collateral advantage: *Hughes Estate v Hughes*, 2006 ABQB 159 at para 20, 396 AR 250, varied on other grounds 2007 ABCA 277, 285 DLR (4th) 57;

c) intended to extort a settlement or other benefit: *Allen v Gray*, 2012 ABQB 66 at para 41, 532 AR 252, appeal dismissed for want of prosecution 2013 ABCA 176, 553 AR 124; *Arabi v Alberta* at para 100; *McMeekin v Alberta (Attorney General)*, 2012 ABQB 625 at paras 32, 38, 41, 543 AR 11

d) intended as revenge, harassment, to oppress, or to inflict harm: *Stout v Track*, at paras 79-82; *Serdahely Trust (Trustee of) v Serdahely Estate; Haljan v Serdahely Estate*, 2008 ABQB 472, 453 AR 337; *Wong v Leung; V.W.W. v Leung*, 2011 ABQB 688 at para 36, 530 AR 82; and

e) conducted in retaliation to other persons' successes or their failure to cooperate with the plaintiff, including unwarranted complaints to professional bodies: *McDonald Estate (Re)*, 2013 ABQB 602 at para 45;

5. initiating "busybody" lawsuits to enforce alleged rights of third parties: *Wong v Giannacopoulos*, 2011 ABCA 206 at para 4, 510 AR 234, leave refused 2011 ABCA 277, 515 AR 58;

6. failure to honour court-ordered obligations:

a) failing to pay costs: *Judicature Act*, s 23(2)(e): *Dykun v Odinshaw* at para 42;

b) a failure to abide by court orders: *R v Fearn*, 2014 ABQB 233 at paras 45, 49; *BNP Paribas (Canada) v Pawlus*, 2007 ABCA 325 at para 4, 162 ACWS (3d) 420; *McDonald Estate (Re)*, 2013 ABQB 602 at para 46;

c) misconduct that is intended to or has the effect of circumventing the operation of court orders: this decision, see paras 121-124.

7. persistently taking unsuccessful appeals from judicial decisions (*Judicature Act*, s 23(2)(f); *Dykun v Odinshaw*, at para 42), spurious appeals intended to incur cost and cause delay are an aggravating factor (*McMeekin v Alberta (Attorney General)*, 2012 ABQB 625 at paras 38, 41, 543 AR 11);

8. persistently engaging in inappropriate courtroom behaviour: *Judicature Act*, s 23(2)(g); *Allen v Gray*, at para 44;

9. unsubstantiated allegations of conspiracy, fraud, and misconduct, including:

a) claims of judge and lawyer deception, fraud, perjury, conspiracy, tampering of records and transcripts, and other conspiratorial misconduct made without the positive evidence (reviewed in *Fearn v Canada Customs*, at paras 73, 76-78, 85) legally required to support such allegations: *Onischuk v Alberta*, at para 35; *Koerner v Capital Health Authority*, 2011 ABQB 462 at para 21, 518 AR 35; *McMeekin v Alberta (Attorney General)*, 2012 ABQB 625 at paras 27-29 38, 543 AR 11;

b) sensational claims of conspiracies and intimidation, harassment and racial bias: *Allen v Gray*, at para 42; *V.W.W. v Wasylyshen*, 2013 ABQB 327 at

para 59, 563 AR 281, leave refused 2014 ABCA 121; *Wong v Giannacopoulos*, at para 4;

c) pleadings that are "replete with extreme and unsubstantiated allegations, and often refer to far-flung conspiracies involving large numbers of individuals and institutions", "where the allegations may be unfounded in fact or merely speculative, but the language is vitriolic, offensive and defamatory": *Del Bianco v 935074 Alberta Ltd.*, at para 35;

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

11. advancing Organized Pseudolegal Commercial Argument ["OPCA"] strategies: *Meads v Meads*; *R v Fearn*, 2014 ABQB 233 at para 49.

Chutskoff v Bonora, 2014 AQBQ 389 at paras 92-93 ["*Chutskoff*"] **[TAB 4]**

53. As noted in both the *Judicature Act* and in *Chutskoff* any one or more of the listed indicia are a basis on which to classify litigation as vexatious.

Judicature Act, s 23(2) **[TAB 3]**

Chutskoff at para 93 **[TAB 4]**

54. Once a finding is made that a litigant is vexatious, the question becomes how to structure the court order restricting the litigant's access to the Court.

55. In *Hok*, Justice Verville stated that the key questions for the Court on this issue are:

(a) Can the court determine the identity or type of persons who are likely to be the target of future abusive litigation?

(b) What litigation subject or subjects are likely to be involved in that abuse of court process?

(c) In what forums will that abuse occur?

Hok at para 36 **[TAB 2]**

56. It is open to this Honourable Court to tailor the terms of order to suit the circumstances of this particular case. For example, in *R v Grabowski*, 2015 ABCA 12, the Alberta Court of Appeal amended the chambers judge's vexatious litigant order to include a provision requiring that all outstanding costs be paid in full before leave of the court is sought for

any further litigation and that evidence of such payment be filed with the court where proceedings are contemplated.

R v Grabowski, 2015 ABCA 391 at para 12 ["*Grabowski*"] **[TAB 5]**

V. ANALYSIS

A. The Stoney Application was vexatious and Maurice Stoney should be declared a vexatious litigant and have his access to Alberta courts restricted.

57. The historical review of Maurice Stoney's claims to membership in Sawridge, the most recent of which is the Stoney Application, and a review of the number and variety of proceedings he has commenced in this regard and his and his counsel's conduct, clearly demonstrate numerous indicia of vexatious litigation set out in the *Judicature Act* and in the case law. These indicia include: collateral attack, hopeless proceedings, escalating proceedings, unsubstantiated allegations of misconduct, bringing proceedings for an improper purpose, failing to honour court-ordered obligations, inappropriate behaviour during litigation, and initiating busybody lawsuits to enforce the alleged rights of third parties.

Collateral Attack:

58. Maurice Stoney has persistently brought proceedings to determine an issue that has already been determined by courts of competent jurisdiction; namely, the question of his acquired rights membership in Sawridge under Bill C-31. That he is not an acquired rights member was conceded by his counsel and confirmed by the Federal Court of Appeal in the 1995 Action. This issue was then determined to be *res judicata* by the Federal Court of Canada when he again tried to argue he was an acquired rights member in the 2012 Action, which decision was not appealed by Maurice Stoney, who was represented at the time by legal counsel, Ms. Priscilla Kennedy (then of Davis LLP).

59. Despite these decisions, and in the face of an unpaid costs award against him in the 2012 Action, Maurice Stoney filed a human rights complaint against Sawridge in 2014 wherein Sawridge was again required to respond to the same arguments previously advanced by Maurice Stoney in the 1995 Action and the 2012 Action. The Deputy Chief

Commissioner of the CHRC subsequently refused to address the complaint on the basis that the subject matter of the complaint had already been dealt with in the 1995 Action and the 2012 Action.

60. Still, these prior decisions did not dissuade Maurice Stoney from subsequently attempting to interject himself into the within Action involving the 1985 Trust on the basis that he was an acquired rights member of Sawridge under Bill C-31 and was therefore an interested party.

61. In the first instance, Maurice Stoney attempted to appeal this Honourable Court's case management decision in *Sawridge #3*, but his application was dismissed by Justice Watson, who commented on the "the embargo against the participation of Mr. Stoney that is or has been created by the various proceedings that have occurred in various courts including the Federal Court". Again, costs were awarded to Sawridge on the failed leave application but have never paid by Maurice Stoney.

62. Even then, Maurice Stoney continued to demonstrate his persistence in re-litigating the acquired rights membership issue by subsequently filing the Stoney Application, seeking to have himself and his siblings added as parties to the within Action. Again, Sawridge was required to take action and expend resources to respond to the same arguments previously made by Maurice Stoney on the issue of his membership which were rejected by courts of competent jurisdiction in the 1995 Action and 2012 Action. Unsurprisingly, this Honourable Court in *Sawridge #6* again rejected Maurice Stoney's position on acquired rights membership, noting that he issue was *res judicata* and had never been appealed by Maurice Stoney through the appropriate forums.

Hopeless Proceedings:

63. To the extent that Maurice Stoney persistently brings proceedings in an attempt to re-litigate the issue of his acquired rights membership under Bill C-31, which issue is *res judicata*, the proceedings are hopeless. There is no chance that the proceedings can succeed, and he could have no reasonable expectation that he would be granted relief.

64. Furthermore, it is particularly aggravating that he sought as part of the Stoney Application to have his (and his siblings') solicitor client costs paid from the 1985 Trust. Any such order would have the effect of depleting the Trust's assets and thereby prejudicing the proper beneficiaries of the Trust. This relief was clearly unwarranted in the circumstances and grossly disproportionate to any plausible remedy.

Escalating Proceedings and Unsubstantiated Allegations of Misconduct:

65. Maurice Stoney has also demonstrated persistence in escalating proceedings, repeating and supplementing grounds and issues and rolling them into subsequent actions. As the proceedings have escalated from the 1995 Action, to the membership application and appeal before Sawridge, to the 2012 Action, to the CHRC complaint, and, now, to the within Action, Maurice Stoney has started to raise, unnecessarily, subjects and issues which are irrelevant and which did not form part of his original proceedings.

66. For example, in his submissions on the Stoney Application and in response to Sawridge's intervenor application, he unnecessarily, and for no proper purpose, raised the issue of Sawridge's unrelated litigation with Elizabeth Poitras in a failed attempt to paint Sawridge in a poor light and in a failed attempt to suggest that it is in fact Sawridge, and not Maurice Stoney, who has failed to comply with previous court orders and who is re-litigating the issue of acquired rights membership under Bill C-31. Maurice Stoney's allegations against Sawridge were completely unfounded as demonstrated in Sawridge's response to same in the November 14, 2016 Sawridge Submissions.

67. Maurice Stoney and his counsel took liberties in misstating or misinterpreting facts and case law, asserting rights which have been judicially determined not to exist, and raising issues of no relevance to the Stoney Application or the Sawridge Application which formed the subject matter of *Sawridge #6*.

Bringing Proceedings for Improper Purpose:

68. As was the case with the impugned party's intentions in *Chutskoff*, Maurice Stoney's intentions in continually attempting re-litigate the same issue are clearly improper in that, in each instance, he initiates the proceedings to attack the results of other legal actions

and judicial decisions where he has been unsuccessful or where he has not sought a timely appeal.

69. This is a case where Maurice Stoney, like the vexatious litigant in *Grabowski*, is quite simply unable to take "no" for an answer when it comes to the issue in question the various proceedings he has commenced in courts and other forums, being whether he is an acquired rights member of Sawridge under Bill C-31.

Failing to Honour Court-Ordered Obligations and Inappropriate Behaviour:

70. As noted by Justice Browne in *644036 Alberta Ltd v Morbank Financial Inc*: "A person is presumed to intend the natural consequences of their acts, so repeated misconduct is a presumptive indication that a litigant does not intend to follow court rules and procedure."

644036 Alberta Ltd v Morbank Financial Inc, 2014 ABQB 681 at para 56 **[TAB 6]**

71. Maurice Stoney has failed to pay the outstanding costs awards owed to Sawridge in the 2012 Action and in relation to his failed leave application in the Court of Appeal in the within Action. He has also repeatedly failed to respect the settled decisions of courts of competent jurisdiction by attempting to re-litigate issues in Court or other forums instead of having followed the appropriate appeal procedure to attack those prior decisions.

72. Furthermore, Maurice Stoney misconducted himself during Questioning on his Affidavit in support of the Stoney Application. The transcript shows that he refused to answer proper questions and that his legal counsel acquiesced in his refusal instead of properly instructing him to answer appropriate questions.

Transcript from Questioning on Affidavit of Maurice Stoney **[TAB 1]**

73. The Stoney Application and the Sawridge Intervenor Application were dealt with through written submissions only, such that his misconduct did not take place in the courtroom as is often the case with vexatious litigants. Nevertheless, when Maurice Stoney's misconduct during Questioning is viewed in the context of his clear disregard for previous Court orders, Sawridge submits that there is a presumptive indication that he

does not intend to follow court rules and procedure (or the rules and procedures for litigation generally).

Initiating "busy body" Lawsuits to the Enforce the Alleged Rights of Third Parties

74. Finally, in his most recent attempt to re-litigate the acquired rights membership issue in the Stoney Application, Maurice Stoney purports to have brought the action on behalf of his siblings, and thereby attempted to enforce the alleged rights of those third parties to membership in Sawridge under Bill C-31. No affidavit evidence was filed by any of his siblings to support an application on their behalf. Nevertheless, Sawridge was compelled to respond to the application and expended further resources reviewing available records relating to the siblings identified in the Stoney Application and Maurice Stoney's supporting affidavit.

75. While one indicia is sufficient to find litigation vexatious, the presence of several indicia is aggravating and supports Sawridge's position that the Stoney Application was vexatious and that Maurice Stoney's persistent pattern of vexatious proceedings warrants him being declared a vexatious litigant both at common law and pursuant to the companion provisions contained in sections 23 and 23.1 of the *Judicature Act*.

B. The Interim Court Filing Restriction Order should be made Permanent.

76. Sawridge submits that for the foregoing reasons, this Honourable Court's July 12, 2017 Interim Court Filing Restriction Order should be made permanent.

77. As was the case with the vexatious litigant in *644036 Alberta Ltd v Morbank Financial Inc*, Maurice Stoney is a person who is an appropriate target for a broad, global court restriction. He has demonstrated, in particular through the proceedings commenced in the within Action, that he is "willing and able to insinuate himself into other people's litigation". He purports to represent others (his siblings), and advances inappropriate, futile and vexatious arguments.

644036 Alberta Ltd v Morbank Financial Inc, 2014 ABQB 681 at paras 96-97 **[TAB 6]**

78. Furthermore, it has been noted the impact of the typical vexatious litigant order (with the broad application and provisions contained within the Interim Order) is not unduly harsh and is appropriate:

> [33] Typical vexatious litigant orders (for example *Henry v El*, 2010 ABCA 312, 193 ACWS (3d) 1099, leave denied [2011] SCCA No 138), require that the vexatious litigant provide to the court an unfiled copy of the proposed statement of claim, motion, or application, and a supporting affidavit to establish grounds for that filing. Realistically, this is not a great hurdle. There is no cost to submit this material (it is not "filed") or make this application. Filing fees only follow if leave is granted. The proposed filing had to be prepared anyway. Any person considering legitimate litigation should at least have taken the step of mustering the evidence and argument they plan to advance. Transforming that into an affidavit is a comparatively minor additional step. Courts often strike out actions that are based on bald allegations: *GH v Alcock*, 2013 ABCA 24 at para 58. A person subject to a vexatious litigant order should not be able to access the courts with bald allegations. This 'evidence mustering' requirement is therefore unremarkable and would be required for a valid claim in any event. This step does not represent "undue hardship" any more than other routine litigation steps that require documentation.

Hok at para 33 **[TAB 2]**

79. However, should this Honourable Court determine that the scope of the existing order is too broad, or that there is insufficient evidence to support an order that restricts litigation against any and all persons, then Sawridge submits that the order should, in the least, restrict Maurice Stoney's access to Alberta courts as it relates any litigation or steps in litigation against Sawridge (and those persons directly associated with Sawridge), and against the Sawridge Trusts and Trustees.

80. For sake of clarity, Sawridge submits that the order restricting Maurice Stoney's access to Alberta Courts should apply, in the least, to litigation steps and litigation against the following:

(a) Sawridge First Nation;

(b) any past, present, or future members of Chief and Council of the Sawridge First Nation;

(c) the 1985 Sawridge Trust;

(d) the 1986 Sawridge Trust; and

(e) the Trustees of the 1985 and 1986 Sawridge Trusts.

81. Furthermore, having regard to Maurice Stoney's historical failure to pay any costs awards made against him by the Courts, Sawridge submits that this is an appropriate case in which to add a condition to the Order requiring that all outstanding costs be paid in full before leave of the court is sought for any further litigation and that evidence of such payment be filed with the court where proceedings are contemplated.

VI. RELIEF REQUESTED

82. For the above reasons, Sawridge prays that this Honourable Court declare that Maurice Stoney is a vexatious litigant and order that his access to the Alberta Courts be restricted on the terms set out in the Interim Order, with the additional condition that all outstanding costs be paid in full before leave of the court is sought for any further litigation and that evidence of such payment be filed with the court where proceedings are contemplated.

ALL OF WHICH IS RESPECTFULLY SUBMITTED this 26th day of July, 2017.

PARLEE McLAWS LLP

EDWARD H. MOLSTAD, Q.C.
Counsel for the Sawridge First Nation

LIST OF AUTHORITIES

TAB 1

COURT FILE NUMBER: 1103 14112

COURT: COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE: EDMONTON

IN THE MATTER OF THE TRUSTEE ACT, RSA 2000, c. T-8, as am.

IN THE MATTER OF THE SAWRIDGE BAND INTER VIVOS SETTLEMENT CREATED BY CHIEF WALTER PATRICK TWINN, OF THE SAWRIDGE INDIAN BAND NO. 19

QUESTIONING ON AFFIDAVIT

OF

MAURICE STONEY

P. E. Kennedy, Ms.	For Maurice Stoney
D. C. Bonora, Ms. E. M. Lafuente, Ms.	For the Trustees of the Sawridge Band Inter Vivos Settlement
C. C. Osualdini, Ms.	For Cathrine Twinn
Joanne Lawrence, CSR(A)	Court Reporter

Edmonton, Alberta
September 23, 2016

INDEX OF UNDERTAKINGS

(Undertakings are provided for your assistance. Counsel's records may differ. Please check to ensure that all undertakings have been listed according to your records.)

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INDEX OF EXHIBITS

INDEX OF OBJECTIONS

(Objections are provided for your assistance. Counsel's records may differ. Please check to ensure that all objections have been listed according to your records.)

****

membership in Sawridge were ignored," and we were focussing on your application. Can you tell me whose applications you mean when you say "our applications," the word O-U-R?

MAURICE STONEY, SWORN AT 1:01 P.M.,
QUESTIONED BY MS. LAFUENTE:

Q Good afternoon, Mr. Stoney. Do you have your Affidavit sworn May 17th, 2016, in front of you this morning (sic)?
A Yes.
Q Okay. I'm just going to start, really, really simple stuff. Can you just tell me your name, please? Your full name?
A Maurice Felix Stoney.
Q Okay. And how old are you, sir?
A I'll be 75 here tomorrow.
Q Happy birthday tomorrow. And so, your date of birth is September 24th --
A 1941.
Q 1941. Okay. Where do you reside, sir?
A Slave Lake, Alberta.
Q Okay.
A 500-4th Street Northwest.
Q Thank you. I'm just going to get you to turn, then, to page 4 of your Affidavit. Sir, is that your signature where it -- where it states -- where the words "Maurice Stoney" appear?
A Yes.
Q Okay. And you swore this Affidavit under oath on May 17th of 2016; correct?
A Yes.

Q Okay. I'm just going to also turn, sir -- do you have a copy of your application filed on August 12th, 2016?

MS. KENNEDY: No.

MS. LAFUENTE: Okay. Do you know what your application filed on August 12th, 2016, is attempting to seek from the Court? Do you --

MS. KENNEDY: No.

Q MS. LAFUENTE: Sorry, sir. Do you have an answer?

A No.

Q You don't -- you don't know what you're seeking from the Court?

A Well -- put that to me again?

Q Okay.

A I didn't really understand.

Q No problem. And if you don't understand, sir, I'm happy to repeat the question or ask it in a different way, if you need.

MS. KENNEDY: Why don't you show it to him?

MS. LAFUENTE: We're just going to try to grab a copy that doesn't have my writing all over it.

Q MS. LAFUENTE: So I'm showing you now a document that's filed August 12th of 2016, and this is your application. Do you see this, sir?

A M-hm.

Q Okay. Can you -- do you understand where it says, "Application to be Added as a Party or Intervener by Maurice Felix Stoney and his Brothers and Sisters"?
A Yes.
Q So do you understand, then, sir, that you are applying to be added as a party to Court of Queen's Bench Action Number 1103 14112?
A Yes.
Q Okay.
MS. KENNEDY: That's the court number.
A Okay.
Q MS. LAFUENTE: And, alternatively, you're seeking to be added as an intervener in that party; is that correct?
A Intervener?
MS. KENNEDY: He is not going to understand that at all.
Q MS. LAFUENTE: Okay. Okay. Fair enough, sir. Okay. Can I just draw your attention, then, to where it says, under -- beside "document," "By Maurice Felix Stoney and his brothers and sisters"?
A Application... Yeah.
Q Okay. You're bringing this application on behalf of your brothers and sisters?
A Yes.
Q Okay. And do you have their consent to do that?

A Yes.
Q Okay. So this application is brought by all 10 of you?
A M-hm. Yes.
Q Thank you, sir. And, sir, if I can draw your attention down to paragraph 2(a) of your application, and it says, "Addition of Maurice Stoney, Billy Stoney, Angeline Stoney, Linda Stoney, Bernie Stoney, Betty-Jean Stoney, Gail Stoney, Alma Stoney, Alva Stoney, and Brian Stoney as beneficiaries of these trusts."
A Yes.
Q Sir, are you also attempting in this application to have yourself declared a beneficiary of the trusts?
A Yes.
Q You are. Okay. Sir, I'm going to take you quite a bit further back, then, and I want to ask you a question about your grandfather. So I understand your grandfather's name was Johnny Stoney?
A Yes.
Q Okay. And Johnny Stoney -- and we can look to paragraph 2 of your Affidavit. Am I correct in understanding that Johnny Stoney was originally a member of the Alexander band?
A Originally, yes.
Q Okay. And that's under Treaty 6; correct?
A Yes.

Q Okay. And he was transferred to the Sawridge band; correct?
A In 1895, I believe.
Q Okay. Okay. So then turning, sir, to paragraph 6 of your Affidavit. You describe that your father's name was William Stoney; is that correct?
A Yes.
Q Okay. And in paragraph 7, you state, "In 1944, my father William Stoney and all of his family, including me, along with other members of Sawridge band were enfranchised because he was working." Do you see that?
A Yes.
Q Okay. It's true, though, sir, that your father voluntarily enfranchised; correct?
A Yes.
Q Okay. So he -- he personally -- intentionally brought an application to be made a full citizen of Canada and relinquished his Indian status; correct?
MS. KENNEDY: Just a minute. When you ask him about being a full citizen of Canada, that's a false statement because you couldn't be a full citizen of Canada in 1944.
MS. LAFUENTE: Okay.
MS. KENNEDY: Couldn't be a full citizen of Canada until, at the very earliest, 1955.
Q MS. LAFUENTE: Okay. Sir, I stand corrected.

He voluntarily sought to relinquish his Indian status; is that correct?

MS. KENNEDY: I think you'd better use the word that's used.

Q MS. LAFUENTE: Okay. He voluntarily enfranchised; is that correct?

A Um...

MS. KENNEDY: Maurice, as I said, you've got -- this is your opportunity to answer the questions. You have to answer them. If that's what you want to say, you say it. Okay?

A Well, in my -- my opinion, he wasn't -- he didn't voluntarily -- volunteer to be enfranchised. He was forced out of the -- of the band by the Federal Government, the government of that era or that particular time.

Q MS. LAFUENTE: Okay.

A But he did enfranchise --

Q Okay.

A -- because of the residential school scenario.

Q Okay. So just going one step further back, then. Your father brought the application to be enfranchised --

A Yes.

Q -- is that correct?

A Yes.

Q Okay. I'm going to turn, then, to your Affidavit,

page -- that's numbered page 28 on the bottom. And so, you have that document in front of you?

A Yes.

Q Okay. And that is a part of Exhibit I to your Affidavit?

A Yep.

Q Okay. Sir, can I ask you, firstly, the copy of this letter which is dated July 2nd, 1943, at the top, you see that?

A M-hm, yeah.

Q The copy that I have in front of me has some annotations at the bottom that are entitled "notes." Do you know whose writing that is?

A Mine.

Q That's your writing?

A Yeah.

Q Okay. So where it starts at "notes" all the way down to the word "reserve" --

A Yeah.

Q -- that's your handwriting?

A Yeah. Yes.

Q Okay. Okay. So you have provided some commentary on this document?

A Yes.

Q Okay. And the initials "M.S." that appear on the bottom, are those your initials?

A Yes.

Q Okay. The question marks that appear throughout the document, are those written by you?
A Yes. Yes.
Q Okay. And why did you write the question marks?
A Well, I didn't understand it, and I don't see why it was written in the -- in the way that -- like, if the person was forced to do something, you know.
Q Okay. So, sir, the question marks aren't due to the fact that you can't read on this photocopy what's written behind the highlighted portions?
A Well, I guess I just didn't understand.
Q Okay. Fair enough. Sir, I'm going to show you now a document, and this document was attached as Exhibit B to an Affidavit of Roland Twinn in a Federal Court application. I'll show you that document now.
MS. KENNEDY: Just a minute. Before I'm going to show that to him, you're going to explain to me how that relates to this Affidavit.
MS. LAFUENTE: Well, I'm going to refer to this document more than once today, but with respect to this particular instance, I would turn to page 28 of the document. It's the second-last page, and it is a better copy of the letter that you've attached as an exhibit to his Affidavit where we can read what is behind the highlighting.
MS. KENNEDY: Okay. Well, if you're

entering it, then we'll just enter this one page.
MS. LAFUENTE: We can enter the one page for now. Okay. So we're going to enter page 28.
MS. KENNEDY: I'm going to have a look at it, first of all.
MS. LAFUENTE: As an exhibit.
Q MS. LAFUENTE: Sir, do you understand --
MS. KENNEDY: Wait.
MS. LAFUENTE: Yeah?
MS. KENNEDY: We're not finished. We have to have an opportunity to review it.
MS. LAFUENTE: Okay.
MS. KENNEDY: We will let you know.
MS. LAFUENTE: Go ahead.
MS. KENNEDY: Which page was it again under 'J'?
MS. BONORA: 28.
MS. KENNEDY: 28. Perhaps you might want to ask Mr. Stoney first if he has ever independently seen this document in this form.
MS. LAFUENTE: Well, I think, firstly, we've already entered it as an exhibit, but what I'm --
MS. KENNEDY: No. You attempted to enter it as an exhibit. We haven't yet agreed to that.
MS. LAFUENTE: Okay. My understanding --
MS. KENNEDY: It hasn't been identified by Mr. Stoney, so --

MS. LAFUENTE: Okay.
MS. KENNEDY: And your other document hasn't been identified, so --
MS. LAFUENTE: Okay. So my understanding when you indicated earlier that you were prepared to put this one page and you ripped the page from the package was that you were agreeing to this page --
MS. KENNEDY: No.
MS. LAFUENTE: -- going in.
MS. KENNEDY: When we get to whether this one goes in or not, it will be this one page alone.
Q MS. LAFUENTE: Okay. Sir, I'm going to put to you that this page, this document, was part of the package that you submitted to the band in your application for membership, which application was submitted on August 30th, 2011. Does that ring true to you, sir?
A I maybe don't understand what you're -- what you're applying to.
Q Sir, did you submit this document as part of your application for membership in the Sawridge First Nation?
A Well, I guess I did because it's got my initial on it.
MS. LAFUENTE: I'd like to enter this document as an exhibit, please.

MS. KENNEDY: Yeah, that can go in as -- this will be Exhibit 1?

EXHIBIT 1:

Letter dated July 2, 1943

Q MS. LAFUENTE: Sir, I think you were indicating that the highlighting on the document you suspect was on the document when you received it. That's correct?

A Pretty sure, yeah.

Q Okay. And who did you receive the documents from?

A It was from Indian Affairs.

Q Okay.

A Along with other -- other documents of my grandfather's, like this history, background, and I think it was -- there was supposed to have been 32 pages. There was four missing. Somebody got those four and said they couldn't find them for some odd reason. Somebody went through them, filed them, and these four pages were missing, and they still can't find them, so...

Q Okay. Sir, I'm just going to read the last two paragraphs to you. And it's -- it says: (As read)

> I don't intend to ask the Department for anything at any time in the way of help, and I do not see any reason why I should not have full citizen rights. If you will send --

And I think it says me -- -- an application form, I would be glad to fill it out immediately and return it to you. The sooner I can complete all arrangements and get out of Treaty, the better it would please me.

And then it is signed, William J. Stoney.

Sir, do you recognize the signature of your father on this document?

A Yes, but he didn't write that.

Q Sorry. You recognize the signature?

A Yeah.

Q Okay. And what did he not write?

A This, whatever it is.

Q And --

A Because it was written by a justice of the peace in Slave Lake by the name of Conklin (phonetic), I think.

Q Okay. And what's your information to suggest that?

A Because when I was sent -- I was looking -- I was searching for stuff too for my -- why they claim that I'm not a band member, eh, and I've got a pile so high. Some of this was included when I asked Indian Affairs different things, and this is why they sent -- they sent me this, and they said,

well, it's been gone through. They didn't tell me who, and there was four or five pages missing, so -- and I know he didn't write that because he couldn't -- his handwriting wasn't -- after residential school, they come out of there with two, three -- after 9 years he spent, I think he had a Grade 4 education.

Q Okay.

A He can -- he could write. He could -- he was a -- that's his signature as I've seen it before, eh.

Q Okay. So you're confirming that that is his signature on this document?

A Yes.

Q Thank you. And, sir, you'll agree with me that your father received payment when he enfranchised?

A Yeah, $600.

Q Your recollection is that it was $600?

A That's what it said in a -- I don't know, and some cents. Okay.

Q Okay. But it's your understanding that he did receive payment?

A Yeah. Yeah.

Q Thank you.

A And if I might add, there was some other people that were forced out, out of the band. They received over 750, $1,000 each as opposed to his 600.

Q Okay. So, sir, turning, then, back to paragraph 7 of your Affidavit. Okay. You'll see that it says, "My father William Stoney and all of his family, including me," and then it says, "were enfranchised," but I want to just clarify, sir, William only had two children that were alive as of 1944, and that would be yourself and Alvin; correct?

A Yeah. Alvin is deceased now.

Q Okay. So the parties that were enfranchised at this time were your mother, your father, your brother Alvin, and yourself; correct?

A Yes.

Q Okay. And your other siblings -- and I understand 10 of them are alive today -- or, I'm sorry, nine of them are alive today. Ten including yourself. Were not born at the time your father was enfranchised; is that correct?

A Was Angeline born in '44?

Q Yes. When is her birthday in 1944? Do you know?

A Not offhand.

Q Thank you. Sir, if I put to you that on the documents that related to the enfranchisement that only yourself and Alvin were listed, would you have any information to the contrary?

MS. KENNEDY: This is the application --

MS. LAFUENTE: Yeah.

MS. KENNEDY: -- for enfranchisement. It's not the actual enfranchisement.

A No.

Q MS. LAFUENTE: So, sir, if you turn to page 31. In April of 1944, when your father signed this application, he listed his children as Alvin and Maurice. Do you see that?

A Yes.

Q Okay. So it's your information that sometime in 1944, your sister -- I'm sorry. I forgot which name you said.

A Angeline.

Q Angeline was born.

A I do believe, yes.

Q Okay. On the application for enfranchisement, only Alvin and yourself are listed. Okay. Your other siblings and the living ones which are listed in paragraph 8 of the Affidavit were not ever members of Sawridge band, were they?

A I don't recall.

Q Okay. Sir, if we leave Angeline aside for a second, your next sister, Linda, was born in 1948. Okay? And all the other children that you list in paragraph 8 of your Affidavit were born after 1948. You would agree with me, sir, that that is after your father was enfranchised; correct?

A It's when they were born, yeah.

Q Okay. So they were not members of Sawridge when they were born; is that correct?
A I don't see how they wouldn't be members because my father was a member of Sawridge band.
Q Okay. Sir, but you understand that your father was not a member of Sawridge band in 1948; correct?
A Yeah.
Q Right.
A But he enfranchised in 1944.
Q Right.
A But he was born a band member, making all of his children eligible and should be members of the Sawridge band.
Q Okay. So you're of the opinion that they should be members --
A Well, they actually are members.
Q Okay. I'm going to turn, then, to paragraph 9 of your Affidavit, and I'll let you read paragraph 9. It's a little lengthy. Let me know when you're finished.
A Yeah.
Q Okay. And you state in that paragraph, "I believe I am an acquired-rights member." Do you see that?
A Could you explain "acquired"?
Q Well, sir, those are your words in your Affidavit, so I'm wondering whether -- did you mean that you were automatically a member? Is that what you mean

by "acquired-rights member"? Sorry, sir?
A Yes.
Q Thank you. Sir, what makes you believe that you are an automatic member?
A Because I was born a band member in 1941.
Q Okay.
A And I am still a band member.
Q Okay. Sir, you've had an opportunity to bring this issue to the courts on a number of occasions; is that correct?
A (No verbal response)
Q Sorry?
A Yes.
Q And has it not been made clear to you by the Courts that you are not an automatic member?
A I don't understand.
Q Have you been told by the Federal Court that you are not an automatic member of Sawridge?
A No.
Q Okay. Sir, I'm going to take you to the decision of Justice Evans of the Federal Court of Appeal.
MS. KENNEDY: No.
MS. LAFUENTE: Pardon me?
MS. KENNEDY: You can do that, but -- let's see it.
MS. LAFUENTE: Okay.
A What year is it?

Q MS. LAFUENTE: Okay, sir. I've placed before you a decision of the Federal Court of Appeal, Docket Number A-326-98. Do you have that in front of you?

A Yes.

Q Okay. And when -- sorry, sir. Halfway down the page, you see the plaintiffs listed. Do you see your name, Maurice Stoney, listed as a plaintiff in that action?

A Yes.

Q Okay. And, sir, were you represented by counsel in this action? You had a lawyer, I should ask?

A Yes.

Q Mr. Abrahmets?

A Abrahmets, yeah.

Q Abrahmets? Thank you. Sir, I'm going to read you paragraphs 4 and 5 and 6 of this decision, and this is a decision of Justice Evans of the Federal Court of Appeal. (As read)

> It was conceded by counsel for the respondents --
>
> And the front page lists the respondents as the plaintiffs.
>
> -- that without the proposed amending paragraphs, the unamended Statement of Claim discloses no reasonable cause of action insofar

as it asserts or assumes that the respondents are entitled to band membership without the consent of the band. It is clear that until the band's membership rules are found to be invalid, they govern membership of the band, and the respondents have, at best, a right to apply for the band for membership -- sorry, to the band for membership. Accordingly, the Statement of Claim against the appellants, Walter Patrick Twinn as chief of the Sawridge Indian band and the Sawridge Indian band, will be struck as disclosing no reasonable cause of action.

Do you see that, sir?

MS. KENNEDY: Those are what the words on the page say, and what the legal argument means and the intent that it has with respect to this particular proceeding are legal questions, and I will be making argument on them.

MS. LAFUENTE: Okay.

MS. KENNEDY: And Mr. Stoney will not be answering questions about legal interpretation.

MS. LAFUENTE: Okay. I think my question to

Mr. Stoney was, had he ever been told by the Federal Court that he did not have an automatic right to membership, to which --

MS. KENNEDY: And --

MS. LAFUENTE: Just a second, Ms. Kennedy. To which he indicated he had not been told that.

MS. KENNEDY: No, and he had not. This is a judgment. He doesn't read --

MS. LAFUENTE: Of the Federal Court.

MS. KENNEDY: -- judgments of the Federal Court. His lawyer may very well. What his lawyer says to him is a question of solicitor-client privilege, and I am telling you that, as his lawyer, I will be making legal arguments.

MS. LAFUENTE: Okay.

MS. KENNEDY: That's the end of the questions on that.

MS. LAFUENTE: Well, I have a couple more questions.

Q MS. LAFUENTE: Sir --

MS. KENNEDY: Fine, but we're not going to be answering them.

Q MS. LAFUENTE: Sir, did you read the Federal Court of Appeal decision?

MS. KENNEDY: Don't answer that.

MS. LAFUENTE: You're objecting to the question of whether he read it?

MS. KENNEDY: Yes, I am.
MS. LAFUENTE: Okay. We'll put your objection on the record.
MS. KENNEDY: That's right.

OBJECTION TO QUESTION:
Sir, did you read the Federal Court of Appeal decision?

MS. LAFUENTE: I'd ask that this Federal Court of Appeal decision be marked for identification.
MS. KENNEDY: It doesn't need to be marked for identification. It's clear what it is, and you can cite it any time you want.
MS. KENNEDY: I'm going to ask for it be marked for identification because we're going to probably need to proceed with these objections and deal with them, and it is going to be much easier for the Court if we can identify what document we were each looking at. And there is no prejudice to you of marking it for identification purposes.
MS. KENNEDY: No, and there is no need to do it either. Go ahead and do it.
MS. LAFUENTE: Thank you.
MS. KENNEDY: You don't need one with an Exhibit 'D' stamp on it that's from Roland Twinn's Affidavit --
MS. LAFUENTE: That's the one that I have, so

if you have a better copy today --

MS. KENNEDY: Yeah. You can produce a copy of the decision for the Court itself.

MS. LAFUENTE: No, the copy that I showed to him today is the copy that we're producing for identification, and that's the one we have. And, again, there is no prejudice to you for the fact that it was once an exhibit in Roland Twinn's Affidavit, and if you think there is, you can mark that on the transcript, and we can deal with that later.

MS. KENNEDY: Mark that on the transcript. It's a Court decision. It should just be going in as the Court decision. We don't need it from someone's Affidavit.

MS. LAFUENTE: Okay.

MS. KENNEDY: Subject to the marking --

MS. LAFUENTE: No. It's going to be marked for identification. She is -- she is making note of her objection that it's got an exhibit stamp on the front.

EXHIBIT D-A FOR IDENTIFICATION:
Federal Court of Appeal Decision by Justice Evans on Court Docket Number docket Number A-326-98

Q MS. LAFUENTE: All right. I'm also going to show you the May 15th, 2013, decision of Justice

Barnes.

MS. KENNEDY: Same thing. Mark it now.

MS. LAFUENTE: Okay. We'll mark this one for identification, please.

I'm still going to ask questions, so you might as well keep your copy.

MS. KENNEDY: Legal decisions speak for themselves rather than lawyers arguing about them.

EXHIBIT D-B FOR IDENTIFICATION:
Decision of Justice Barnes in Docket Number T923-12 dated May 15th, 2013

Q MS. LAFUENTE: Sir, in front of you marked as Exhibit B for Identification is Docket T923-12, which is the decision of Mr. Justice Barnes dated May 15th, 2013, with respect to an appeal from the Appeals Committee's decision.

MS. KENNEDY: It wasn't an appeal. It's a judicial review.

Q MS. LAFUENTE: Judicial review of the Appeals Committee's decision to deny membership -- sorry, to deny your appeal with respect to Sawridge membership. Sir, I'm going to turn you to paragraph 8 of that decision, and it states that -- oh, sorry. Backing up. Sir, you are identified on page 1 as the applicant in this decision. Do see that on page 1?

MS. KENNEDY: It speaks for itself.

Q MS. LAFUENTE: Okay. The paragraph -- returning, then, to paragraph 8 of the decision, it says: (As read)

> The applicants maintain that they each have an automatic right of membership in the Sawridge First Nation. Mr. Stoney states at paragraph 8 of his Affidavit of May 22nd, 2012, that this right arises from the provisions of Bill C-31.

Turning, then, to paragraph 15. Mr. Justice Barnes states at paragraph 15: (As read)

> I also cannot identify anything in Bill C-31 that would extend an automatic right of membership in the Sawridge First Nation to William Stoney. He lost his right to membership when his father sought and obtained enfranchisement for the family. The legislative amendments in Bill C-31 do not apply to that situation. Even if --

And, I'm sorry, turning to paragraph 16.

MS. KENNEDY: Let him read it.

You're not going to be answering anything on it.

MS. LAFUENTE: Ms. Kennedy, if you could just wait until I'm finished before you provide your commentary, that would be appreciated.

Q MS. LAFUENTE: (As read)

Even if I am wrong in my interpretation of these legistlative provisions, this application cannot be sustained, at least in terms of the applicant's claims to automatic band membership. All of the applicants in this proceeding, among others, were named as plaintiffs in an action filed in this court on May 6th, 1998, seeking mandatory relief requiring that their names be added to the Sawridge membership list. This action was struck out by the Federal Court of Appeal.

Okay. Turning to paragraph 17: (As read)

It is not open to a party to relitigate the same issue that was conclusively determined in an earlier proceeding. The attempt by these applicants to reargue the

question of their automatic right of membership in Sawridge is barred by the principle of issue estoppel.

Sir, did you read the decision of Justice Barnes?

MS. KENNEDY: He is not answering any of these questions. It's a legal decision. You've read the portions you want. That's what you want on the record.

MS. LAFUENTE: Well, what is the basis --

MS. KENNEDY: We can have the legal argument.

MS. LAFUENTE: Okay. What's the basis for the objection that I cannot ask a question as to whether he read this decision?

MS. KENNEDY: I've given it. We'll argue about it in court.

MS. LAFUENTE: I'm not asking for his -- any legal analysis. I'm asking whether he read the decision. There is nothing improper with that question.

OBJECTION TO QUESTION:

Sir, did you read the decision of Justice Barnes?

MS. KENNEDY: Have you read this decision?

A I won't answer that.

Q MS. LAFUENTE: Pardon me?

A I won't answer that.
Q Okay. Turning back, then, to your Affidavit. At paragraph 11, you reference an action that was commenced by yourself, along with your cousins, against Sawridge as well as Chief Walter Twinn? Do you see that?
A Yes.
Q Okay. Would you agree with me that you were named as a plaintiff in that action?
A Yes.
Q Okay. And --
A We've seen this one?
MS. KENNEDY: Yeah. We've already gone through this all.
MS. LAFUENTE: Sorry?
MS. KENNEDY: We've gone through this all. You've already put it -- your Exhibit A.
A You asked questions on it already.
MS. KENNEDY: Yeah.
Q MS. LAFUENTE: Well, I -- yes. Exhibit A refers to a decision in this action, but, sir, my question for you, would you agree with me that you sought in that action a right to membership within the Sawridge First Nation?
MS. KENNEDY: He'd agree with you with what he says in the paragraph 11. In June 2000, the Federal Court of Appeal, giving the citation,

struck this action as a claim for judicial review improperly brought as an action.

MS. LAFUENTE: Okay. That wasn't my question. My question --

MS. KENNEDY: All right. Fine.

MS. LAFUENTE: My question is whether he would agree with me that he sought membership as one of the things he was claiming in this Statement of Claim.

MS. KENNEDY: Court didn't say that.

MS. LAFUENTE: I'm not asking what the Court said. I'm asking what did his Amended Statement of Claim seek. So I'm going to put in front of you a --

MS. KENNEDY: No, you're not.

MS. LAFUENTE: I am putting in front of you a copy of the Amended Statement of Claim.

Q MS. LAFUENTE: Sir, do you see the Statement of Claim in front of you?

A Yes.

Q Okay. And do you see your name on the front page as a plaintiff in that Statement of Claim?

A Yes.

Q Going to turn, sir, to paragraph 37 of the Statement of Claim.

MS. KENNEDY: This is an extraordinarily poor copy. Don't you have something better than

this?

MS. LAFUENTE: Best copy that I have. It's no different than the copies of the documents that were attached to your Affidavit. There is --

MS. KENNEDY: Well, they're historical documents.

MS. LAFUENTE: This is the copy of the document that I have, and it's the copy of the document that's actually been admitted into evidence in court prior.

Q MS. LAFUENTE: So turning to paragraph 37(c), sir, do you see where it says that you were seeking a declaration that the plaintiffs are members of the Sawridge band and entitled to all rights and benefits of such members?

MS. KENNEDY: That's not paragraph 37.

MS. LAFUENTE: 37(c)?

MS. KENNEDY: No.

MS. LAFUENTE: Oh, sorry. It's a claim for relief. It's not a numbered paragraph. It's just numbered (c). My apologies, sir.

MS. KENNEDY: Yes.

Q MS. LAFUENTE: Do you see paragraph (c)? Do you agree with me, sir, that you sought relief in the Court wherein you were asking the Court for a declaration that you were entitled to membership of Sawridge band?

MS. KENNEDY: The words are on the page.
Q MS. LAFUENTE: Sir, is this your Statement of Claim?
MS. KENNEDY: You've named him as a plaintiff.
MS. LAFUENTE: I'm just asking him if this is his Statement of Claim.
MS. KENNEDY: You can read what the statement of the plaintiffs are, and you understand what a legal proceeding is.
Q MS. LAFUENTE: Okay. Sir, do you see, then --
No. So are you objecting --
MS. KENNEDY: No, you --
MS. LAFUENTE: -- to him answering the question as to whether or not the Statement of Claim sought a declaration that he was a member?
MS. KENNEDY: That's right, because it's a question of what the pleading says, which is a legal question, and you've referred to it, and that's it. Put it in as your exhibit.
MS. LAFUENTE: Sure. I'm not asking him for -- as to what -- whether that -- what that means. I'm not asking for a legal interpretation. I'm just asking --
MS. KENNEDY: No, but you're --
MS. LAFUENTE: -- whether he saw it.

MS. KENNEDY: -- asking him to read the words on the page and then confirm that the words are on the page, which is the same thing as just putting the documents in.

MS. LAFUENTE: Okay. So then I'm going to ask to put this document in as the next exhibit.

MS. KENNEDY: For identification.

MS. LAFUENTE: Sure.

EXHIBIT D-C FOR IDENTIFICATION:
Amended Statement of Claim

Q MS. LAFUENTE: Sir, in this Statement of Claim in this action, were you represented by counsel?

MS. KENNEDY: He has already answered that.

MS. LAFUENTE: My apologies if he has already answered. So his answer previously, he was represented by counsel in this action?

MS. KENNEDY: Yes, he has.

MS. LAFUENTE: Okay. Thank you.

Q MS. LAFUENTE: Okay, sir. Turning, then, back to your Affidavit at paragraph 12. You state, "All of our applications for membership in Sawridge were ignored." Can you tell me which applications you're referring to that were ignored?

A Applications for membership... Yes. If I recall, they were ignored.

Q Which applications were ignored?

A For band membership.
Q Which application? On what occasion was it ignored?
A I don't understand what you're implying.
Q I'm -- sir, I'm not implying anything. I'm trying to understand what you mean by your sentence, "All of our applications for membership in Sawridge were ignored." What -- which applications were ignored?
A Well, as of today, they're still ignored.
Q Sir --
A Nothing become (sic) of my request.
Q Okay. Sir, do you mean, then, that they were ignored because they have not yet admitted you to membership? Is that what you mean?
A I don't -- I don't understand.
Q Okay. Okay. Sir, you did submit a paper application for membership; is that correct? To apply for membership?
A 1985, I believe, was it?
Q Sir, I don't have any information about an application made in 1985. Did you make such application?
A 1985, yeah. And I had to wait -- I sent it in in the spring, and I had to wait until that fall before I got my response.
Q Sir, are you sure that happened in 1985, or are you referring to the application that you submitted in

2011?

A 1985, because that's when we got our Treaty rights: 1985.

Q Sir, I'm going to ask for you to provide a copy of the application that you submitted in 1985, as we don't have any such documents in our possession.

A If we have one.

MS. KENNEDY: Yeah. I don't know if we do or not.

A Because it was -- I'm pretty sure it was April 1985. It was in the spring, anyway.

Q MS. LAFUENTE: Okay.

A Because I was told that I had to do that before the fall, fall session. I applied, and it took them 6 months before I got a response because they were waiting for their -- Sawridge were waiting for their documents they had sent in prior -- prior -- or after I sent mine in. So I had to wait for whatever was going on then. Then I got my application in November -- October or November, I think, 1985 --

Q Okay.

A -- stating that I am -- got my Treaty rights back and stuff like that, eh, which should have stated that I was a band member, a full band member.

Q Okay. So I'm going to ask for you to provide a copy of that, of that application, and the response

that you received.

MS. KENNEDY: We'll do our best if we have a copy. We may not anymore have a copy.

MS. LAFUENTE: Certainly.

UNDERTAKING NO. 1:

To make best efforts to provide a copy of the application for band membership that was submitted in 1985.

Q MS. LAFUENTE: Sir, earlier, I handed your counsel -- and I believe she still has a copy -- of your band membership application form which was submitted -- this was, sorry, signed by you on August 30th, 2011. Can I ask you to have that in front of you again?

MS. KENNEDY: What did you say the date was?

MS. LAFUENTE: August 30th, 2011.

MS. KENNEDY: The one that says, "reapply"?

A Reapply.

MS. KENNEDY: If you look on --

A We had to reapply.

MS. KENNEDY: Beginning of the first page: "If this is an application for membership, please explain the basis of your application," and it says, "reapply"?

MS. LAFUENTE: Yes. That is the document that you have in front of you?

Q MS. LAFUENTE: Okay. Sir, on the page --

page 8, is that your signature there, sir?
A Page 8? Yes.
Q Okay. And you see above where it says, "certification"? And do you understand, sir, that you were certifying that everything in this application was true? Did you understand that, sir?
MS. KENNEDY: Did you read that before you signed it?
A Oh, right, the appeal. This is the application form?
MS. KENNEDY: Yeah. Did you read this --
A Yeah. Yeah.
MS. KENNEDY: -- before you signed it?
A Yeah.
Q MS. LAFUENTE: Yes. So you were -- everything in it that you stated in this application, sir, was it true?
MS. KENNEDY: I don't think that he can answer that question without going back and reading every single line.
Q MS. LAFUENTE: Okay. Sir, when you certified that everything was true on page 8 of the application, were you being truthful?
MS. KENNEDY: Do you want to look through this? Because, you know, they've produced it. You haven't produced it.

A No. No, I won't answer them questions.
MS. KENNEDY: Do you remember if --
A Leave it for the courts.
Q MS. LAFUENTE: Sorry, sir. Did you say that you won't answer that question and you're going to leave it for the courts?
A Yes.
Q Okay.
A This last part here, to my knowledge, is biassed. From what I gather, it's biassed.
Q Sorry. What is biassed?
A This last certification. It says in one part, "no right of appeal." That's biassed, isn't it?
Q Well, sir, if you -- if you read before that, it says that "I understand that if any of the information provided is found to be false or misleading, then this shall be sufficient grounds for the denial of my application, and there shall be no right of appeal."
A Yeah, I read that. Yeah.
Q Okay. Sir, you're not going to answer the question as to whether you were -- you understood this -- or, sorry, that you were certifying this to be true?
A No.
Q Okay.
OBJECTION TO QUESTION:

Sir, when you certified that everything was true on page 8 of the application, were you being truthful?

Q MS. LAFUENTE: Sir, were you truthful, then, when -- on page 1 when you checked off the box that said this was an application for membership in the band by a nonmember?

A It was... Reapply.

Q So you see where you checked off this is an application in the band by a nonmember?

A Meaning?

Q Did you check that box?

A By a nonmember? Uh...

MS. KENNEDY: It's completely inconsistent with the rest of the file.

Q MS. LAFUENTE: Sir --

A I won't answer that.

Q -- by submitting this application, you were submitting your request to become a member; is that correct?

MS. KENNEDY: It states that it's an application to reapply for membership. That's what it states.

A Yeah.

MS. LAFUENTE: Actually, it says it's an application for application for membership in the band by a nonmember. That is checked.

MS. KENNEDY: It's --
MS. LAFUENTE: Where you're referring to the word "reapply," it says, "If this is an application for membership, please explain the basis for your application," and someone has written the word "reapply" there.
MS. KENNEDY: Did you write that word?
A No. I don't remember writing that, no. I don't think so.
Q MS. LAFUENTE: Okay. And, sir, you would agree with me that it -- when you were asked, how did you cease to be a member, you indicated that you were forced out?
A Yeah.
Q So when you submitted this application, sir, was it your intention that you were applying to become a member of the Sawridge First Nation?
A The one prior to this, yes. I was applying for it because I had to --
Q Okay.
A -- apply for the band membership.
Q Okay. And, sir, on page 5 of this application, item number 'E,' at the bottom of the page, it asks, "Do any current band members support your bid for membership?" and you ticked the box yes and wrote "chief and council." That wasn't true, was it?

A Yes, it was.
Q You had the support of chief and council at the time you submitted this application?
A Well, not in writing. Verbally.
Q By whom?
A By one of the councillors.
Q Okay. And, sir, you would agree with me that in 2011, this is after you had brought the Statement of Claim suing the band for damages; right? You brought -- you brought your application for membership in 2011; correct? Sir, this document is 2011?
A I won't answer. I won't answer that.
Q Sir, this document was signed in 2011; correct?
MS. KENNEDY: That's when it's dated.
MS. LAFUENTE: Okay.
MS. KENNEDY: The other document is a court document which has a date on it.
Q MS. LAFUENTE: Okay. Sir, you were also involved prior to 2011 in starting a new band; is that correct?
MS. KENNEDY: Don't answer that.
How does that relate to the Affidavit?
MS. LAFUENTE: It relates to his application for membership.
MS. KENNEDY: There is nowhere in any of

the -- in any application in any court proceeding that I've ever seen that related to an application to some other band.

(DISCUSSION OFF THE RECORD)

MS. LAFUENTE: I'd like to identify -- sorry, mark as an exhibit for identification the full application document, which was the one -- it's the one you have in front of you. You had previously ripped one page off of it, but this is the full copy.

MS. KENNEDY: For identification.

MS. LAFUENTE: For identification.

EXHIBIT D-D FOR IDENTIFICATION:

Application for band membership

Q MS. LAFUENTE: Sir, ultimately, after your application was submitted in 2011 for membership, that application was denied. Do you understand that?

A Yes.

Q Yes? Okay. And you appealed that, did you not?

MS. KENNEDY: No -- or -- to the --

MS. LAFUENTE: Appeal --

MS. KENNEDY: -- Appeal Committee.

A Yes.

MS. LAFUENTE: Yes.

MS. KENNEDY: So clarify when you're saying all the various steps, please.

Q MS. LAFUENTE: Okay. Sir, so you appealed that to the Appeal Committee?
A Yes.
Q Okay. And that was dismissed; is that correct?
A Yes.
Q Okay. And we've since referred to the decision of Justice Barnes, but I understand, sir, that you brought an application for judicial review of that decision to the Federal Court; is that correct?
A I did that?
MS. KENNEDY: Yes.
A Yeah.
Q MS. LAFUENTE: Yes, you did, sir?
A Yes.
Q Yes? Okay. Sir, are you aware that when Justice Barnes's decision was issued that you were ordered to pay costs to Sawridge First Nation?
MS. KENNEDY: He is not answering that question.
A No.
MS. LAFUENTE: And what is the basis for objecting to that?
MS. KENNEDY: The issue of the costs and what happened with that has nothing to do with this proceeding.
MS. LAFUENTE: Are you suggesting that the fact that he may not have paid costs owing to

him -- sorry, owing by him in a previous proceeding may not be relevant or is not relevant to him being added to this proceeding?

MS. KENNEDY: Absolutely. He is claiming as a beneficiary. That doesn't have to do with the issue of costs in another proceeding.

MS. LAFUENTE: Do you mean that he is claiming to be added as a party or an intervener?

MS. KENNEDY: He is claiming to be added as a party because he is a beneficiary.

MS. LAFUENTE: You allege that he is a beneficiary.

MS. KENNEDY: That's right. We allege he is a beneficiary.

Q MS. LAFUENTE: Sir, I'm going to put to you that there were costs in the amount of $2,995.65 plus interest payable to Sawridge First Nation as a result of the judicial review application and that you have not paid those costs.

MS. KENNEDY: Don't answer the question.

OBJECTION TO QUESTION:

Sir, I'm going to put to you that there were costs in the amount of $2,995.65 plus interest payable to Sawridge First Nation as a result of the judicial review application and that you have not paid those costs.

Q MS. LAFUENTE: Sir, did you appeal the decision of Justice Barnes to the Federal Court of Appeal?

MS. KENNEDY: You're well aware of whether or not a court proceeding has been appealed or not.

MS. LAFUENTE: And I'm asking your client whether he appealed it.

MS. KENNEDY: And you have no need to because you can search the court record, and you know whether he appealed it or not.

Q MS. LAFUENTE: Sir, I'm going to ask for your answer. Did you appeal this to the Federal Court of Appeal?

MS. KENNEDY: Don't answer the question.

A I won't answer.

MS. LAFUENTE: And the basis for --

MS. KENNEDY: And he didn't raise any question in -- or paragraph in his Affidavit with respect to any appeal to the Federal Court of Appeal.

MS. LAFUENTE: It's certainly within the confines of this application as to whether or not all of the issues he is attempting to raise now have been previously litigated, and what --

MS. KENNEDY: That's right, and the question of that is a legal question, and we will be arguing about that in the application.

Q MS. LAFUENTE: Sir --
MS. KENNEDY: And we will be arguing about issue estoppel. That's quite correct.
OBJECTION TO QUESTION:
Did you appeal this to the Federal Court of Appeal?
Q MS. LAFUENTE: Sir, in this matter that you are attempting now to become a party or an intervener of, did you seek an appeal of Justice Thomas's order and then go to -- sorry, and seek an extension of time to file an appeal of Justice Thomas's order?
MS. KENNEDY: With respect to a point from a decision in December of 2015?
MS. LAFUENTE: Yes.
MS. KENNEDY: You have the Court of Appeal decision of Mr. Justice Watson. You can read it.
Q MS. LAFUENTE: Okay. Sir, I'm going to put to you that you were ordered to pay costs in the amount of $898.70 on June 14th of 2016 to Sawridge First Nation, and these costs are not paid. Would you agree with that?
MS. KENNEDY: Well, that's not entirely correct because part of those costs are paid by setoff agreed to this morning with respect to the conduct money to be here this afternoon.
MS. BONORA: Ms. Kennedy, if you listen to

the question, it was we didn't set off the costs against the costs owing to Sawridge First Nation. We set off the costs owing to the Sawridge trustees. There were two sets of costs included in the appeal.

MS. KENNEDY: Well, you're here today, I assume, asking questions on behalf of the Sawridge trustees. You're not here on behalf of asking questions for the Sawridge First Nation, and in fact, the Sawridge First Nation is not a party or an intervener to this action yet, and there will be no question with respect to costs payable to them.

MS. LAFUENTE: Okay. So if you would have listened carefully to the question I asked, about costs to the Sawridge First Nation.

MS. KENNEDY: Well, then don't answer it because it's not relevant. They're not a party to this proceeding or an intervener.

OBJECTION TO QUESTION:

Sir, I'm going to put to you that you were ordered to pay costs in the amount of $898.70 on June 14th of 2016 to Sawridge First Nation, and these costs are not paid. Would you agree with that?

Q MS. LAFUENTE: Okay. Sir, I just want to confirm as well there were costs payable to the trustees as a result of the dismissal of the time

to extend -- sorry, the extension of time application?

MS. KENNEDY: And as I just previously stated, those costs were set off against part of the moneys owed for conduct money to be here today.

Q MS. LAFUENTE: Is it not true that there are -- there are -- even taking into account --

MS. KENNEDY: There are some costs remaining. Part of those costs have been paid off by setoff in terms of being here today.

Q MS. LAFUENTE: Okay. So, sir, what I'm asking, then -- and I'm asking for your answer -- there are --

MS. KENNEDY: And he is not giving it.

MS. LAFUENTE: Ms. Kennedy, I find it very difficult that you have not heard the question, and you are already indicating that your client is not going to answer it.

MS. KENNEDY: That's correct.

MS. LAFUENTE: I just want to put that on the record.

MS. KENNEDY: That's fine. You go right ahead and do that.

MS. LAFUENTE: Prior to asking it, it's a little difficult to understand the basis of the objection.

Q MS. LAFUENTE: Sir, do you still owe costs to

the trustees for that application to the Court of Appeal?

A I won't answer that.

OBJECTION TO QUESTION:

Sir, do you still owe costs to the trustees for that application to the Court of Appeal?

Q MS. LAFUENTE: Okay. Sir, turning, then, to paragraph 40 -- 4 -- sorry, 14 of your Affidavit, you indicate, "For 30 years I have been seeking to have my membership rights in Sawridge be recognized." Do you see that?

A Yes.

Q Okay. And would you agree with me, sir, that includes the filing of the Statement of Claim which was later struck? Did you do -- did you undertake those actions?

MS. KENNEDY: We've already dealt with that. You've already --

MS. LAFUENTE: I asked him --

MS. KENNEDY: -- asked questions on those, and he has answered, and we've got the --

MS. LAFUENTE: Okay.

MS. KENNEDY: -- transcript on that.

Q MS. LAFUENTE: And you would agree with me, sir, that you also applied for membership, which was denied --

MS. KENNEDY: Oh --
Q MS. LAFUENTE: Excuse me. Appealed to the Appeals Committee, an application for judicial review brought and denied; correct?
MS. KENNEDY: These questions have already been answered.
Q MS. LAFUENTE: Okay. And, sir, did you also bring a human rights complaint against Sawridge First Nation?
A I won't answer that.
Q You won't answer that?
A No.
Q On what basis?
MS. KENNEDY: Again, that's against the Sawridge First Nation. What does that have to do with an action to be added as a party or interested party as a beneficiary?
MS. LAFUENTE: So, again, you keep characterizing your application as an application to become a beneficiary.
MS. KENNEDY: Yes.
MS. LAFUENTE: It's an application to become a party or an intervener.
MS. KENNEDY: As a beneficiary.
MS. LAFUENTE: Okay.
MS. KENNEDY: And what is the human rights complaint about?

MS. LAFUENTE: Okay. Well, we can go to the human rights complaint.

OBJECTION TO QUESTION:

Okay. And, sir, did you also bring a human rights complaint against Sawridge First Nation?

Q MS. LAFUENTE: Sir, I've put in front of you a letter addressed to Chief Roland Twinn of the Sawridge First Nation attaching the decision of the Canadian Human Rights Commission. This letter is dated April 29th, 2015. Do you see that in front of you?

A Yes.

Q Okay. And I'm going to turn to the last page of this, which is a -- which is entitled the record of decision. Okay. And it states at reasons for decision: (As read)

> The complainant has been a party to two different proceedings before the Federal Court with respect to the matters raised in this complaint: an action against respondent which was struck by the Federal Court of Appeal in 2000 and an application for judicial review which was dismissed in May 2013. The essence of the complaint, i.e. the

respondent's denial of the complainant's membership in the band, was central to both proceedings. The complainant clearly raised discrimination in his application for judicial review when he alleged that the decision violated the *Charter*; however, he did not provide adequate evidence for the Federal Court to overturn the decision of the respondent. The Supreme Court in *Figliola* held that Human Rights Commissions must respect the finality of decisions made by other administrative decisionmakers with concurrent jurisdiction to apply human rights legislation when the issues raised in both processes are the same. In this instance, the other decision-makers are judges of the Federal Court and the Federal Court of Appeal and could have clearly considered the human rights allegations raised. Therefore, it would not be unfair for the Commission to decide not to deal

with this complaint.

Would you agree with me, sir, that you brought the same matters that you had brought to the Federal Court previously to the Canadian Human Rights Commission?

MS. KENNEDY: The Human Rights Commission decision clearly states what the facts are.

MS. LAFUENTE: So, again, he won't answer that question.

MS. KENNEDY: No.

A No.

OBJECTION TO QUESTION:

Would you agree with me, sir, that you brought the same matters that you had brought to the Federal Court previously to the Canadian Human Rights Commission?

MS. LAFUENTE: Okay. I'm going to ask that we mark this decision as the next exhibit for identification -- sorry, the next document for identification.

MS. KENNEDY: Which is 'E,' correct? Thanks.

EXHIBIT D-E FOR IDENTIFICATION:

Decision of the Canadian Human Rights Commission

Q MS. LAFUENTE: Sir, do you understand that, regarding the 1985 trust, "beneficiaries" means all

persons who qualified as members of the Sawridge Indian Band pursuant to the provisions of the *Indian Act* as of April 15th, 1982?

A No, I don't --

MS. KENNEDY: No, not --

A No.

MS. KENNEDY: Not 1982. The wording of the 1985 trust beneficiaries does not state that. It says April the 15th, 1985.

(DISCUSSION OFF THE RECORD)

MS. KENNEDY: Yeah. He can't answer that because it's an unconstitutional provision, and that's a legal argument.

OBJECTION TO QUESTION:

Sir, do you understand that, regarding the 1985 trust, "beneficiaries" means all persons who qualified as members of the Sawridge Indian Band pursuant to the provisions of the *Indian Act* as of April 15th, 1982?

Q MS. LAFUENTE: Sir, were you a member of the band -- or, sorry, did you qualify as a member of the band on April 15th, 1982?

MS. KENNEDY: Don't answer that because that as well relates to a constitutional argument.

OBJECTION TO QUESTION:

Did you qualify as a member of the band

on April 15th, 1982?

Q MS. LAFUENTE: Sir, you were enfranchised in 1944; correct? Correct?

A Correct.

Q Had anything happened that changed that by April 15th, 1982?

MS. KENNEDY: Something happened on April the 17th, 1982, that quite substantially changed that, and that is that aboriginal rights and Treaty rights became constitutional rights.

MS. LAFUENTE: And I think you said April the 17th?

MS. KENNEDY: I did.

MS. LAFUENTE: And I asked about April the 15th, 1982.

MS. KENNEDY: That's right, and after that date --

MS. LAFUENTE: Right --

MS. KENNEDY: -- you cannot refer back to something previous --

MS. LAFUENTE: Okay.

MS. KENNEDY: -- to the changes to the Constitution.

MS. LAFUENTE: Okay. So --

MS. KENNEDY: And that's a legal argument.

Q MS. LAFUENTE: So my question was, had any --

MS. KENNEDY: And he won't be answering it.

MS. LAFUENTE: No. Again, just please wait until I can get it on the record.

Q MS. LAFUENTE: Had any --

MS. KENNEDY: Sure. You've got it on the record.

Q MS. LAFUENTE: Had anything changed as of April 15th, 1982, where you were identified that -- sorry, you were advised that you qualified as a member after having become enfranchised in 1944?

MS. KENNEDY: Don't answer that.

A I won't answer it.

MS. LAFUENTE: Okay.

OBJECTION TO QUESTION:

Had anything changed as of April 15th, 1982, where you were identified that -- sorry, you were advised that you qualified as a member after having become enfranchised in 1944?

Q MS. LAFUENTE: Sir, do you understand that with respect to the 1986 trust, beneficiary status is restricted to members?

A Won't answer it.

Q Why not?

MS. KENNEDY: Well, first of all, because he doesn't even have a document in front of him.

OBJECTION TO QUESTION:

Sir, do you understand that with respect

to the 1986 trust, beneficiary status is restricted to members?

Q MS. LAFUENTE: Okay. Sir, have you ever read the 1985 trust?

A I won't answer that.

Q Why won't you answer that question? It's factual, sir. Have you read it?

MS. KENNEDY: No.

MS. LAFUENTE: Sorry --

A No.

MS. LAFUENTE: -- Ms. Kennedy, are you saying "no" as in he shouldn't answer the question, or are you providing him an answer?

MS. KENNEDY: I'm telling him no because it's a legal -- we're talking about legal arguments with respect to these documents.

MS. LAFUENTE: So your word "no" is meant to advise him not to answer the question, the factual question, as to whether he has read the trust deed?

MS. KENNEDY: That's right.

MS. LAFUENTE: Okay.

OBJECTION TO QUESTION:

Sir, have you ever read the 1985 trust?

Q MS. LAFUENTE: Sir, have you read the 1986 trust deed?

A I won't answer that.

OBJECTION TO QUESTION:
Sir, have you read the 1986 trust deed?

Q MS. LAFUENTE: Sir, going back to your Affidavit -- just for clarity on the record, I just want to confirm that our earlier discussions as to whether the trust deed referred to April 15th, 1985, or April 15th, 1982, we were able to clarify by reading into the record the exact wording of the 1985 trust deed.

MS. KENNEDY: You didn't read in the whole trust deed.

MS. LAFUENTE: Correct.

MS. KENNEDY: And the wording of the whole trust deed is significant in order to determine what those provisions mean.

MS. LAFUENTE: Okay. But, Ms. Kennedy, the concern that you raised earlier was you were quite certain that it said April 15th, 1985, and we've just clarified that it says April 15th, 1982. That's the part that I'm saying we've clarified.

MS. KENNEDY: But the part that I'm saying is that it relates to all of the words related to that trust deed.

MS. LAFUENTE: Okay.

MS. KENNEDY: And --

MS. LAFUENTE: But you don't agree with me that it says April 15th, 1982?

MS. KENNEDY: In one particular portion, yes.
MS. LAFUENTE: Okay.
MS. KENNEDY: And what it says with respect to the rest of it is the wording in the trust deed which is what we're arguing about before the Court.
MS. LAFUENTE: And that's what you're attempting to bring before this Court by being added as a party.
MS. KENNEDY: That's what we're arguing in terms of our ability to be before the Court as a beneficiary.
Q MS. LAFUENTE: Okay. Sir, going back to paragraph 12 of your Affidavit, we talked about this first sentence here before, "All of our applications for membership in Sawridge were ignored," and we were focussing on your application. Can you tell me whose applications you mean when you say "our applications," the word O-U-R?
A I won't answer it.
Q Why won't you answer that, sir? It's your Affidavit, and I want to know what you mean when you say, "Our applications were ignored."
A Did you ask that question before?
Q No. I'm asking what you mean by the word, "Our" -- the words, "our applications." Whose applications?

A No, I won't answer that.
Q Sir, why aren't you answering that question?
A I'll leave it up to the courts.
Q You -- I'm going to point out that your counsel did not put an objection on the record but that you are refusing the answer the question because you want to leave it up to the courts.
MS. KENNEDY: That's what he said.
Q MS. LAFUENTE: Okay. So, sir --
MS. KENNEDY: You don't have to repeat it.
Q MS. LAFUENTE: -- how is the Court supposed to -- how is the Court supposed to understand what you mean by the word "our" if you won't tell us what you mean?
MS. KENNEDY: Okay. Now, let's not get into arguments with him, and that's what you're doing by characterizing the way he has made an answer. He has made an answer. You may not like it, but he has made an answer.
MS. LAFUENTE: Okay.

OBJECTION TO QUESTION:

Okay. Sir, going back to paragraph 12 of your Affidavit, we talked about this first sentence here before, "All of our applications for membership in Sawridge were ignored," and we were focussing on your application. Can you tell me whose

applications you mean when you say "our applications," the word O-U-R?

Q MS. LAFUENTE: Sir, do you have any information as to whether your siblings have applied for membership in Sawridge First Nation?

A Siblings? Yes, some of them -- some of them did, but they were all denied.

Q Who -- who made application?

A Uh, brothers.

Q Which brothers?

A Bill.

Q Okay.

A And... I just can't recall right now. I'd have to -- I'd have to look at their response and stuff like that.

Q But you've brought this application --

A They did --

Q -- on behalf of all of you.

A They were supposed to send in their applications because we talked about this before, and -- and I told them that maybe you should do -- maybe you should be sending in your applications.

Q Okay.

A But -- now, whether it's -- they've done it or not, I'm not really sure. I can't answer that.

Q Okay. Okay.

A And another thing, if they did, they were -- it

would be automatically thrown out anyways. Their point of view would be, what is the use?

MS. LAFUENTE: Sir, I probably only have a few more questions for you, so I'm going to suggest we just take a 10-minute break, if that's okay with you, and then we'll reconvene and hopefully finish up quite quickly. Okay?

(ADJOURNMENT)

Q MS. LAFUENTE: Sir, earlier, you had indicated that you were bringing this application and representing your brothers and sisters in doing so. Can you tell me, are any of them incapacitated and unable to represent themselves in this litigation, in this application?

A I won't answer that.

MS. KENNEDY: I'm going to tell you that I have done a number of actions in QB and in the Federal Court as representative actions where one brother or sister acts for the entire family, and that is the standard method of proceeding, and that is the method of proceeding that's been used since 1997.

MS. LAFUENTE: So is the answer that they are incapacitated or this is the choice?

MS. KENNEDY: This is the choice.

MS. LAFUENTE: And this is a representative action?

MS. KENNEDY: Yes. On behalf of a family, yes. That's the way you go. Each of them have exactly the same characteristics. They're all members of the same family. They all have the same interest.

MS. LAFUENTE: Okay. In going through what we've asked and what's been answered and what has been objected to today, it's clear that we have a very different view as to what's relevant and what ought to be answered, and so, today, we're going to adjourn --

MS. KENNEDY: Sure.

MS. LAFUENTE: -- this questioning, and we'll proceed after we deal with the application -- sorry, the objections --

MS. KENNEDY: Sure.

MS. LAFUENTE: -- and get some further Court direction as to that.

MS. KENNEDY: Yeah. Okay. Good.

PROCEEDINGS ADJOURNED SUBJECT TO UNDERTAKINGS 2:47 P.M.

CERTIFICATE OF TRANSCRIPT

I, the undersigned, hereby certify that the foregoing pages are a complete and accurate transcript of the proceedings taken down by me in shorthand and transcribed from my shorthand notes to the best of my skill and ability.

Dated at the City of Edmonton, Province of Alberta, this 26th day of September, 2016.

Joanne Lawrence

Joanne Lawrence, CSR(A)
Court Reporter

B

C

D

E

F

W

Y

TAB 2

Hok v Alberta, 2016 ABQB 651 (CanLII)

Date: 2016-11-21
Docket: 1504 00745; 1504 00746; 1504 00747
Other citation: [2016] AJ No 1207 (QL)
Citation: Hok v Alberta, 2016 ABQB 651 (CanLII), <http://canlii.ca/t/gvqsq>, retrieved on 2017-07-26

Court of Queen's Bench of Alberta

Citation: Hok v Alberta, 2016 ABQB 651

Date: 20161121
Docket: 1504 00745, 1504 00747, 1504 00746
Registry: Grande Prairie

Action No. 1504 00747, 1504 00745

Between:

Shirley A. Hok

Applicant

- and -

Her Majesty the Queen In Right of Alberta

Respondent

- and -

The Honourable David R. Shynkar,
Provincial Court Judge, Provincial Court of Alberta

Respondent
(Not a party to this application)

Action N

o. 1504 00746
And between:

Shirley A. Hok

Applicant

- and -

Her Majesty the Queen In Right of Alberta

Respondent

- and -

The Honourable David D. Holmes,
Provincial Court Judge, Provincial Court of Alberta

Respondent
(Not a party to this application)

Reasons for Judgment
of the
Honourable Mr. Justice Gerald A. Verville

I. Introduction

[1] Shirley A. Hok sought judicial review of three decisions by two Judges of the Provincial Court of Alberta who refused to issue process, pursuant to s 507.1 of the *Criminal Code*, RSC 1985, c C-46, against an RCMP officer and members of a family who lived next door to her. Ms. Hok had a long-standing conflict with those neighbors. The RCMP officer on investigating the dispute, laid charges against both Ms. Hok and one of her neighbors.

[2] On June 8, 2016, I issued written reasons that denied Ms. Hok's judicial review applications: ***R v Hok***, 2016 ABQB 335 (CanLII) (***Hok #1***). In that decision, I determined that Ms. Hok's judicial review application was an instance of vexatious litigation: paras 79-103. Pursuant to s 23.1 of the *Judicature Act*, RSA 2000, c J-2, I notified Ms. Hok and the Minister of Justice and Solicitor General (Minister) that they had 30 days to make written submissions as to:

1. whether Ms. Hok should be declared a vexatious litigant,
2. whether Ms. Hok's access to Alberta Courts should be restricted, and
3. what form those restrictions, if any, should take.

[3] Ms. Hok's written submissions were received on July 4, 2016. The Minister provided a brief of law on July 7, 2016, but took no position in relation to Ms. Hok. Ms. Hok

filed an "Affidavit of Rebuttal, et al" in response on July 18, 2016. The respondents made no submissions.

II. Submissions to the Court

A. Ms. Hok

[4] Ms. Hok submits that her access to Alberta Courts should not be restricted in any way. She seeks the following:

1. I want a ***voiding-out*** of judge/Verville's false-and-misleading/defamatory-libelous claim of me being a ***"vexatious litigant"***;
2. I want a ***quashing/voiding-out*** of judge/Verville's false-and-misleading and curtailing ***court-order*** to make me have to apply to the court if I want to make any court-action filings;
3. I want a ***voiding-out*** of ALL of judge/Verville's disgusting misleading statements of my having some kind of a ***mental disorder*** et al (ie: whenever someone is vigilant, that is ***NOT*** some kind of mental disorder et al);
4. I want the ***re-opening of my file*** ->> because I want that criminal offender of [D.B.], the son Michelle Sapp/Baron (Baron Oilfield Supply et al) ***brought to justice/to set an example/to act as a deterrent*** et al;
5. Any such further and other relief as I may advise and this Honourable Court deem fit.

[Emphasis and styling in original.]

[5] The grounds for her application are:

6. "Legal standards frequently call for the application of ***the reasonable person test***. Judicial fact-finding, an important part of a judge's work, calls for the ***evaluation of evidence*** in light of ***common sense and experience***." - per Commentary 4/Integrity/Ethical Principles for Judges/*Canadian Judicial Counsel*;
7. "An ***abuse of discretion*** is a ***failure to take into proper consideration the facts*** and ***law*** relating to a particular matter; an arbitrary or unreasonable departure from precedent and settled judicial custom." On appeal of an exercise of judicial discretion, "abuse of discretion" is a standard of review requiring the appellate court to find that the lower court's decision would ***"shock the conscience" of a reasonable person*** in order to reverse the decision below." - per my *Wikipedia-download*;
8. Recall that any judge sitting on their *"fat-chair"* "***MUST*** decide ***HONESTLY*** and ***IMPARTIALLY*** on the basis of ***THE LAW*** and ***THE EVIDENCE***" et al - per: *Ethical Principles for Judges/Canadian Judicial Council*;
9. But, judge/G.A. Verville had made many, many ***errors of law*** and ***errors of applicable usable facts*** -->> giving many, many ground of ***mixed fact and law errors***; and had ***denied facts*** et al; AND had displayed gross ***ABUSE OF DISCRESSION*** of me;
10. But, judge/G.A. Verville had made many false-and-misleading, ***slanderous libelous statements*** about me - without his having had *any PROOF* at all

(as his backing) to give him the necessary requirement to make such disgustingly false-and-misleading documented ***slanderous libelous*** claims of me;

11. But, judge/G.A. Verville had displayed much severe ***abuse of discretion*** against me - making the decision-reasoning of his ***an atrocity of justice*** towards me and my rights to have a fair and ethical *Special Chambers hearing/judicial review of June 7, 2016*;

12. Such further and other grounds as I may advise and this Honourable Court deem fit.

[Emphasis and styling in original.]

[6] Her written submissions continue to broadly criticize my conclusion that her actions are abusive. What follows are several representative excerpts from Ms. Hok's "Written Submissions":

52) Know that judge/Verville had ***NO BACKING***, ***NO REAL ETHICAL SUBSTANTIATON*** to give him the required merit to curtail my want of doing valid court-filings et al. Know that only because he mimics both false-and-misleading judges et al NEVER EVER gave him any real, rational merit to label me as a "vexatious litigant" - cause he cannot merely ***SPEWL-OUT*** that claim (without having any required REAL authentic support of it).

53) And, know that by judge/Verville's falsely misleading and unethical claim of me having already been a "*vexatious litigant*" he has deliberately put a ***BLOCK*** onto me -->> intentional done to curtail my want of ***public prosecution service*** (along with my want of brining criminal offenders to justice) et al.

54) Plus, judge/Verville's false claim of me being a "vexatious litigant" has also *slandered* me/*DEFAMATORY LIBELOUSLY defamed me* [three right facing arrows one above the other] he has ***HARMED me/damaged*** me!

...

60) And by judge/Verville's slanderously-libelous documentation that my determination and fight for justice et al "***suggest an obsessive inability to let matters go***" -->> but *HUH!* Know that by judge/Verville having made such a falsely misleading claim about me clearly shows that he's ***wacko+-*** and with an ***ulterior motive*** (being that of to get me to stop; to *NOT* bring around justice of those criminal offenders et al). Be aware of the fact that whenever "***matters are decided" unethically/falsely*** - there then is a real valid right to fight further to get an ***ethical and rightful*** and ***fair/just*** end-point. Is that not odd et al? But - for a judge, being like that of judge/Verville, to ***falsely cite*** that a determined person (that is fighting for truth and justice, and rightfulness), is therefore *obsessive* -->> gives verification of a judge's *dementedness* et al! And, the judge is then ***highly biased*** and ***inciting barratry*** et al!

...

64) Next, severely unethical judge/Verville goes on to make the claim that I have been a "vexatious litigant" via my having committed "escalating proceedings" - but exactly WHAT THE HECK is the result of gotten unethically false end-point? Recall that any hearing *HAS TO BE* ***FAIRLY*** and ***ETHICALLY*** and ***JUSTLY*** rendered -->> but do not stupidly claim that all judges and lawyers and Crown prosecutors et al are ethically decent and fair

"people". They are very capable of having ***hidden hostilities*** - and know that a *pecuniary cop* is NOT the only facet of the ***public-service sectors*** that has those "*on the take*" et al!

...

70) Next, judge/Verville continues-on to make the false-and-defamatory claim that I had brought my three individual judicial review applications "***for improper purposes***" - but *HUH*!

71) And, yet again judge/Verville falsely cited that when I had boldly made a positive statement that then meant that I had "a***dmitted***" to something (see his *paragraph 94*) - but ***HUH***! Yet again judge/Verville wants the reader to believe that I had been doing something bad or wrong, and that I had then "***fessed-up***" -->> but ***B.S.!*** What judge/Verville was attempting was to falsely invalidate all of the ***criminal negligence*** and ***false complaints-dismissals*** et al that had been constantly and unethically+ done onto me -->> that shows that I have been ***a "target"***; and ***not getting*** any ***proper public-service*** by the RCMP et al! And, what I had been doing was showing ***the networking/collusiveness*** of all of the ***breaches of public service*** et al towards me et al! [lightning bolt icon] Therefore, my having made my bold statements *NEVER* had been "admissions" of guilty actions et al! Here again judge/Verville had WARPED et al what really had taken place -->> showing deviousness and unfairness et al of judge/Verville.

...

76) All that I am going say regarding that above falsely misleading accusation (by demented judge/Verville) that takes into account his paragraphs 98-100, is that I DEFINITELY DO have the PROOF of my claims about the slough of gross misconducts et all perpetuated via lawyers, judges, police-members, etc. *KNOW* that each and every organization has a ***CODE OF CONDUCT*** and/or a ***CODE OF ETHICS*** and/or ***PROFESSIONAL STANDARDS*** et al -->> that ***over-rules*** each and every *regulated members*. And *KNOW* that we, the *lowly "little people"* have ***RIGHT***S, including the right to have decent and ethically given ***PUBLIC SERVICE*** (given by those within the realms of providing *public-service*) ET AL!

77) And again - know that a judge is there in place to be a ***public service*** to that of even the *lowly "little person"* that is ***without*** *MEGA-MONEY-BUCKS/mega-influence* et al. And, for a judge (like that of judge/Verville) to do such mal-service and mega-damage et al to me displays HIS intentional ***demeaning INSOLENCE ARROGANCE*** - up to the point one can safely assume that judge/Verville is using his PENIS-head to do the thought-processing, and/or has "itchy palms" (*jist* waiting for a pay-off et al).

...

87) And so, as judge/Verville had ***falsely and unethically*** declined to grant me any of the remedies that I had wanted (along with my want of the ***over-turning*** of the ***process-hearing judge's*** refusal to "*issue process*" of my "*private information*" 's "***507.1"/process hearing***), I am therefore requesting that *my file be re-opened* et al -->> to allow the process to continue-on (to bring around justice et al) - as judge/Verville has been ***obstructing justice*** while also having ***defamed me*** (along with his ***false BLOCKAGE*** of my opportunity to court-file further any *applications* et al). (note: see *Rule 9.13/Alberta Rules of Court*). And - I want that *vexatious litigant order* of Verville's (of me) ***quashed*** et al.

[Format and style as in original.]

B. The Minister of Justice and Solicitor General of Alberta

[7] The Minister's submissions relate to the principles and procedures for court intervention that affects the steps required for a person to access Alberta courts. The Minister cites ***RO v DF***, 2016 ABCA 170 (CanLII), 87 CPC (7th) 1, and submits that a court order that restricts court access should be structured to restrict litigation in relation to a defined group of 'target' litigants, where that class can be identified by a litigant's history. The Minister also argues that a Court should only restrict access to itself (i.e., Queen's Bench), unless there is evidence a person "had acted (or was likely to act) in a vexatious manner in some other court."

[8] The Minister also observes that there is a question of whether superior courts have an inherent jurisdiction to restrict litigant access, or whether the authority to limit court activities is strictly set by the *Judicature Act*, RSA 2000, c J-2, ss 23-23.1 provisions.

[9] The Minister does, however, note that Rooke ACJ of this Court in ***Re Boisjoli***, 2015 ABQB 629 (CanLII), 29 Alta LR (6th) 334 concluded that the Alberta Court of Queen's Bench had inherent jurisdiction to take steps of this kind. The Minister submits that the courts have a broad discretion to set processes for how leave may be sought, including steps to shelter court staff, and preconditions which must be met before a person is permitted to resume litigation, such as that outstanding court costs are paid.

III. A Two-Stage Procedure to Court Access Restriction

[10] In ***Lymer v Jonsson***, 2016 ABCA 32 (CanLII), 612 AR 122, Costigan JA ruled that procedural justice requires that a person against whom court access restriction has been considered have the opportunity to make submissions as to whether any restriction is appropriate, or, if so, what the scope of that restriction should be. This Court has responded to ***Lymer*** by adopting a two-step process in scenarios where a person has abused the Court's processes. This procedure is analogous to the common-law approach to contempt of court. The hearing judge, having observed a problematic court participant, evaluates that court participant's conduct to determine whether the person has abused court processes and/or exhibits indicia of vexatiousness, and therefore may potentially require restrictions on access to court functions, or other disciplinary steps. The second step is where restrictions are ordered, if appropriate. The candidate for court access restriction is given an opportunity to make submissions on whether access restrictions are appropriate, and what form those restrictions would take.

[11] Two other reported judgments have partially implemented the ***Lymer*** two-step process. In ***Gauthier v Starr***, 2016 ABQB 213 (CanLII), 86 CPC (7th) 348, Rooke ACJ declared Gauthier a "vexatious litigant", and invited the Minister to apply to have Gauthier's court access restricted. No application was made. A divorcing spouse in ***Kavanagh v Kavanagh***, 2016 ABQB 107 (CanLII) was also declared a "vexatious litigant" and an additional hearing was set for the second step of the two-step procedure, however, that litigant passed away before that hearing. This response to Ms. Hok is therefore the first judgment to conduct the second step of this two-step process.

[12] This two-step process is not an absolute requirement. ***Lymer***, also states that: "The sufficiency of notice will be assessed in the context of whether ... [the abusive litigant] ... was not taken by surprise by the issuance of a vexatious litigant order on the Court's own motion." ***R v Grabowski***, 2015 ABCA 391 (CanLII), 609 AR 217 is cited as example of where surprise did not occur because the prior litigation history made it clear that the appellant was given ample opportunity to deny impropriety and to assert his good faith, thereby rendering the two-stage process unnecessary.

[13] However, what satisfies the 'no surprise' rule is difficult to evaluate since ***Lymer (Re)***, 2014 ABQB 674 (CanLII), 9 Alta LR (6th) 57 reports Lymer had previously made submissions that his actions were not frivolous and vexatious and therefore that his filing activities should not be restricted (para 13). Master Smart in ***Lymer (Re)*** also applied ***Chutskoff v Bonora***, 2014 ABQB 389 (CanLII), 590 AR 288, affirmed 2014 ABCA 444 (CanLII), 588 AR 303, the leading authority on the indicia of litigation abuse, and concluded Lymer had engaged in five of the categories of litigation misconduct that each individually warrant gatekeeping restrictions on Lymer's court access: paras 85-113.

IV. The Alberta Court of Queen's Bench's Authority to Control Court Activities

[14] As previously stated, the Minister argues that it remains unresolved whether an Alberta court has an inherent jurisdiction to restrict commencement or continuation of a legal proceeding. If it does not, the alternative is that some or all court authority to control abusive litigation may be obtained only through legislation.

[15] The Minister cites ***Pawlus v Pope***, 2004 ABCA 396 (CanLII), 357 AR 347, where the Court of Appeal at para 16 stated "[t]here are conflicting authorities as to a court's inherent jurisdiction to prevent a litigant from commencing an action without leave of the court. ...". These conflicting authorities are, however, not identified. The Court went on to state at para 17:

17 The issues relating to inherent jurisdiction and the breadth of any inherent jurisdiction to deal with vexatious proceedings are very important. This Court has not dealt with s. 23. Nor do we wish to do so without notice to the Minister of Justice and Attorney General, who should have an opportunity to address the meaning of s. 23 and the extent to which it should limit the court's inherent jurisdiction, if at all.

[16] In Alberta, there are two statutes that authorize a Court to intervene and restrict litigation activities where litigation is "vexatious", namely: the *Judicature Act*, referred to by the Minister, and the *Family Law Act*, SA 2003, c F-4.5, s 91. The interplay of these two provisions has received little judicial commentary.

[17] Two UK Court of Appeal decisions, ***Ebert v Birch & Anor***, (also cited as ***Ebert v Venvil***), [1999] EWCA Civ 3043 (UK CA) and ***Bhamjee v Forsdick & Ors (No 2)***, [2003] EWCA Civ 1113 (UK CA), set out the common law authority of UK courts to restrict litigant court access. Some Commonwealth authorities had concluded that UK and Commonwealth courts had no inherent jurisdiction to restrict a person from initiating new court proceedings, and instead that authority was first obtained when Parliament passed the *Vexatious Actions Act, 1896*. ***Ebert*** concludes that is false, as historical research determined that in the UK courts had exercised common law authority to restrict persons initiating new litigation prior to passage of the *Vexatious Actions Act, 1896*. That legislation and its successors do not codify the court's authority, but instead legislative and common-law inherent jurisdiction control processes co-exist.

[18] The Quebec Court of Appeal, citing ***Ebert***, also recognizes an inherent jurisdiction to control new and hypothetical proceedings: ***Tremblay v Charest***, 2006 QCCA 204 (CanLII) at para 6. That Court indicates this inherent jurisdiction extends to provide superior courts the authority to shelter tribunals and other bodies that are unable to control vexatious litigants: ***Productions Pixcom Inc. v Fabrikant***, 2005 QCCA 703 (CanLII) at paras 22-23, JE 2005-1493, leave denied [2005] SCCA No 460.

[19] In ***Dykun v Odishaw***, 2001 ABCA 204 (CanLII), 286 AR 392, the Alberta Court of Appeal issued what is functionally a modern *Judicature Act*, ss 23-23.1 vexatious litigant

restriction, though the order is styled as an injunction. However, no legislation at that point existed that could support issuing the ***Dykun v Odishaw*** order. Instead, the *Judicature Act* vexatious litigant provisions then in effect required a separate application by originating notice, with written consent by the Minister of Justice and Attorney General of Alberta:

> 23(1) When, on an application made by way of originating notice with the consent in writing of the Minister of Justice and Attorney General of Alberta, the Court is satisfied that a person has habitually and persistently and without any reasonable ground instituted vexatious legal proceedings in the Court or in any other court against the same person or against different persons, the Court may order that no legal proceedings shall, without leave of the Court, be instituted in any court by the person taking those vexatious legal proceedings. ... [Emphasis added.]

[20] The ***Dykun*** "injunction" order did not conform to the *Judicature Act* procedure, and was made on the Court's own motion. Logically, this decision was therefore made under the Alberta Court of Appeal's inherent common law authority to control its own processes. A subsequent appeal to the Supreme Court of Canada was denied leave: ***Dykun v Odishaw***, [2001] SCCA No 442.

[21] In light of the Minister's submissions, a key issue is whether there are three alternative bases (*Judicature Act*, *Family Law Act*, inherent jurisdiction) on which this Court can restrict an abusive court participant's litigation activities? Or as queried by the Minister, is this capacity only granted to Alberta Courts via legislation?

[22] In ***KE v CSM***, 2016 ABQB 342 (CanLII) at paras 14-20, Browne J. observed these two legislative schemes are alternative approaches, and a court can choose either option in a family law dispute, *or a superior court may exercise its inherent jurisdiction* (at para 40). Other decisions of the Alberta Court of Queen's Bench also conclude that Court has an inherent jurisdiction to restrict litigant filing: ***Re Boisjoli***, 2015 ABQB 629 (CanLII) at para 9; ***Sikora Estate (Re)***, 2015 ABQB 467 (CanLII), at paras 16-17.

[23] Other Court of Appeal judgments indicate Alberta courts have the inherent authority to restrict court access. ***Grabowski***, at para 9, confirms a Queen's Bench court access order was made explicitly on Rooke ACJ's own motion under the *Judicature Act*, s 23-23.1 authority. However, the Court cites Queen's Bench and Court of Appeal authority and states:

> The Court enjoys an inherent jurisdiction to control its own process; as such, a judge may declare a litigant vexatious on his or her own motion. ... [Emphasis added.]

[24] ***SG v Larochelle***, 2005 ABCA 111 (CanLII) at para 13, 363 AR 326, leave denied [2005] SCCA No 220, confirms a court access restriction order issued by Lee J. of this Court in ***SG v Larochelle***, 2004 ABQB 33 (CanLII), 355 AR 32. One of the grounds of appeal was Lee J. had "... exceeded his jurisdiction in precluding the appellant from pursuing further applications and actions without leave." Notably, Justice Lee at para 89 made explicit that this order was made under the trial court's inherent jurisdiction:

> ... I am exercising my inherent jurisdiction and prohibiting Mr. S.G. from filing any further applications in this Action or initiating any other proceedings in this Court without prior leave of the Court.

This too confirms the Court of Appeal has recognized Alberta courts possess an inherent jurisdiction to restrict future and hypothetical litigation by an abusive litigant.

[25] The Alberta Court of Queen's Bench, a superior court of inherent jurisdiction, has at least the same authority to restrict court access as the Alberta Court of Appeal, especially

since the Court of Appeal derives its authority and power from legislation: *Court of Appeal Act*, RSA 2000, c C-30. I therefore conclude this Court's authority to restrict court access is not solely derived from the *Judicature Act* and/or *Family Law Act* or restricted by this legislation but rather co-exists with it.

V. Principles that Guide the Scope of Court Access Restrictions for Future Litigation

[26] Court access and activity in Canada is moving away from a focus centered strictly on litigants' rights and interests. In the past several years, the Supreme Court of Canada has increasingly instructed that judges and court participants engage in a "culture shift" when it comes to litigation procedure, and the formal rights of litigants. In ***Hryniak v Mauldin***, 2014 SCC 7 (CanLII), [2014] 1 SCR 87, Karakatsanis J. wrote that the steps required in civil litigation should be proportional to their functional value (para 28): "... [T]he best forum for resolving a dispute is not always that with the most painstaking procedure." The historic over-emphasis on procedural rights and exhaustive formality has made civil litigation impractical and inaccessible (para 2):

> ...The balance between procedure and access struck by our justice system must come to reflect modern reality and recognize that new models of adjudication can be fair and just.

[27] This principle extends to all court proceedings, "especially those involving self-represented parties": ***Trial Lawyers Association of British Columbia v British Columbia (Attorney General)***, 2014 SCC 59 (CanLII) at para 110, [2014] 3 SCR 31.

[28] More recently, the Supreme Court, in ***R v Jordan***, 2016 SCC 27 (CanLII), at paras 44-45, has called for a parallel "change in courtroom culture" that emphasizes efficiency and the functional protection of an accused person's rights in a criminal proceeding. A key instruction to criminal trial courts is that useless litigation steps should be immediately dealt with in a summary manner: para 63.

[29] The ***Hryniak*** "culture shift" applies to control of persons who abuse court processes: ***Chutskoff*** at para 31, ***Gao v Ontario (Workplace Safety and Insurance Board)***, 2014 ONSC 6497 (CanLII) at para 5, 37 CLR (4th) 7; ***Tupper v Nova Scotia (Attorney General)***, 2015 NSCA 92 (CanLII) at paras 46-49, 390 DLR (4th) 651, leave denied [2015] SCCA No 520; ***Raji v Borden Ladner Gervais LLP***, 2015 ONSC 801 (CanLII) at para 8; ***Dias v WSIB***, 2016 ONSC 5226 (CanLII) at para 7; ***Purcaru v Vacaru***, 2016 ONSC 1609 (CanLII) at para 14, 265 ACWS (3d) 710; ***Raitman v Medallion Developments (South Maple) Limited***, 2014 ONSC 3380 (CanLII) at para 16-17; and ***Lelond v The Park West School Division***, 2015 MBCA 116 (CanLII) at paras 79-84, 3423 Man R (2d) 188.

A. The Impact of a Vexatious Litigant Order

[30] There is no dispute that a person cannot be denied access to Canadian courts. However, that right of access is not unlimited. Chief Justice McLachlin in ***Trial Lawyers Association of British Columbia***, at para 47, explains:

> ... There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice. [Emphasis added.]

[31] ***Trial Lawyers Association of British Columbia*** explores when a barrier to court, in this case filing fees, is unconstitutional as it impedes access to justice. While barriers to frustrate or discourage abusive litigation are a legitimate exercise of legislative or court authority, "... legislation which effectively denies people the right to take their cases to

court ..." [emphasis added] is prohibited: para 40. "Undue hardship" is the threshold that blocks effective access: paras 45-48.

[32] Though orders that restrict court access are sometimes described as "extraordinary", the the potential infringement of a person's rights inflicted by the standard pre-filing leave application requirement should not be exaggerated. In ***Wong v Giannacopoulos***, 2011 ABCA 277 (CanLII) at para 8, 515 AR 58, Slatter JA observed:

> The applicant argues that the vexatious litigant order denies her the basic right of a Canadian citizen to commence a legal action. That is not the true effect of the order. The applicant can still commence any legitimate action; she is only subject to a screening procedure to make sure that any action she proposes is properly founded in fact and law, and will be diligently prosecuted. The vexatious litigant order does not substantially prejudice the applicant. [Emphasis added.]

[33] Typical vexatious litigant orders (for example ***Henry v El***, 2010 ABCA 312 (CanLII), 193 ACWS (3d) 1099, leave denied [2011] SCCA No 138), require that the vexatious litigant provide to the court an unfiled copy of the proposed statement of claim, motion, or application, and a supporting affidavit to establish grounds for that filing. Realistically, this is not a great hurdle. There is no cost to submit this material (it is not "filed") or make this application. Filing fees only follow if leave is granted. The proposed filing had to be prepared anyway. Any person considering legitimate litigation should at least have taken the step of mustering the evidence and argument they plan to advance. Transforming that into an affidavit is a comparatively minor additional step. Courts often strike out actions that are based on bald allegations: ***GH v Alcock***, 2013 ABCA 24 (CanLII), at para 58. A person subject to a vexatious litigant order should not be able to access the courts with bald allegations. This 'evidence mustering' requirement is therefore unremarkable and would be required for a valid claim in any event. This step does not represent "undue hardship" any more than other routine litigation steps that require documentation.

[34] Vexatious litigant orders have included more stringent requirements, such as:

1. representation via a lawyer is a pre-requisite of filing (***Boe v Boe***, 2014 BCCA 208 (CanLII) at para 36, 356 BCAC 217),
2. an abusive court participant must pay outstanding court costs as a precondition to future litigation steps (***Grabowski***, at para 12), and
3. requiring payment into court of security for costs (***Dykun***).

Obviously, these substantial financial obligations are therefore reasonable 'hurdles' to control an abusive court participant. In light of ***Trial Lawyers Association of British Columbia***, this emphasizes simply how low an obstacle a leave application actually is, when it comes to access to justice.

B. Relevant Factors for the Scope of a Vexatious Litigant Order

[35] The *Judicature Act*, ss 23-23.1 and ***RO v DF*** appear to suggest "a history of "persistently" engaging in any of the prohibited actions in subsection 23(2)" is required prior to court intervention to restrict a person from initiating or continuing litigation without leave. However, in ***Henry***, a single instance of baseless litigation coupled with bad out-of-court conduct was a basis for a vexatious litigant order. The Ontario Court of Appeal in ***Bishop v Bishop***, 2011 ONCA 211 at para 9, 200 ACWS (3d) 1021, leave denied [2011] SCCA No 239 concluded activities inside and outside of court are viewed as a whole in assessing litigation misconduct.

[36] 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?

[37] ***Hryniak*** instructs that modern case management balances litigant rights against net benefits and expenditure of court resources. The tangible impediment caused by a requirement that a person seek leave to initiate or continue litigation is low. Control of frivolous, vexatious, and abusive litigation is a valid exercise of legislative and court authority: ***Trial Lawyers Association of British Columbia***. I conclude that when a court makes a vexatious litigant order it should do so to respond to *anticipated* abuse of court processes. This is prospective case management step, rather than punitive.

VI. Ms. Hok's Personal Actions and Statements Predict Broad Litigation Abuse

[38] There is no dispute that Ms. Hok has engaged in abuse of court processes. This is paralleled by her other complaint activities. That information was largely volunteered. In ***Hok #1***, I concluded she has engaged in hopeless proceedings: paras 87-88. She escalated her conflict with her neighbors in a range of non-court contexts, and has initiated at least four lawsuits, attempted to lay criminal informations against persons which had no merit, and then challenged that result via judicial reviews that were also unsuccessful: paras 89-90. Her litigation and complaint activities have no reasonable purpose, but are intended instead to cause harm: paras 93-100. She does not conceal her anger and hostility to those she perceives as opposing her. Ms. Hok's language is openly scandalous and inflammatory, both in the past, in her judicial review applications (paras 101-102), and now in her submissions in response to ***Hok #1***.

[39] These are all bases to conclude her litigation is abusive, and each could warrant restriction on her court access. Multiple abusive aspects favours immediate court intervention to control this abuse of court processes.

[40] The Alberta Court of Appeal recently in ***Hok v Alberta (Justice & Solicitor General)***, 2016 ABCA 356 (CanLII) applied *Rule* 14.92(e) to strike out one of Ms. Hok's appeals. The Registrar referred Ms. Hok's appeal of a Court of Queen's Bench summary judgment that dismissed a lawsuit against a number of Crown Prosecutors. Ms. Hok's appeal was made contrary to my order in ***Hok #1*** and Ms. Hok had also engaged in "inflationary re-configuration" of her claim from $3,227.73 to $600,000.00.

[41] Ms. Hok in her written submissions indicates she has filed two additional appeals of Queen's Bench judgments:

> Action No. 1404 00582 – Shirley A. Hok v QE II Hospital Psychiatric Unit et al
>
> Action No. 1404 00583 – Shirley A. Hok v RCMP PACT Unit et al

[42] The Minister made brief submissions of law in relation to Ms. Hok and this decision. Notably, the Minister took no position on whether Ms. Hok should be subject to court access restrictions. Nevertheless, Ms. Hok's "Affidavit of Rebuttal et al" responds to the Minister's brief in a very negative manner:

9) But then -->> on July 13, 2016 I had been hand-served Mr. Timothy Hurlburt's ***un-court-filed*** "*Written Submissions of the Minister of Justice and Solicitor General of Alberta*" (of July 12,2016) And what a complete BIASED and unethitcal document that is et al!

...

12) Know that via Mr. Hurlburt's totally ***UNFAIR/BIASED+*** "*Written Submissions of the Minister of Justice and Solicitor General of Alberta*" (of July 12/2016) the reader is led to believe that there is just *NO WAY IN HELL* that I can ever be successfully vindicated of judge/Verville's ***false order*** (of Verville having labelled me a *vexatious litigant*) - along with ***his delusional SLANDER/DEFAMATION*** of me et al! That then means that a disgustingly unethical judge can never be fought - and that a judge is NEVER wrong about that moot point et al -->> but *HUH*! [lightning bolt icon]

...

17) And Mr. Hurlburt, by his "*Written Submissions of the Minister of Justice and Solicitor General of Alberta*" (of July 12/2016), has automatically backed the "*vexatious litigant order*" against me -->> which his *NOT* right!

18) As well - know that I want an ethically decent judge to do *the reviewing/decision-making* in regards to my disputing/challenging judge/Verville's "*vexatious litigant order*" of me et al. But, recognize that what I have been repetitively subjects to are judges that are either seeing "*PINK ELEPHANTS*" or "*people with six heads*" et al; and judges deeming that I have *NO FINGERS at all* held up, none at all - when really I am holding-up *ALL FIVE* of them (on my one hand) et al! Know that the slough of filthy, unethical judges that I have been subject to "***stink to high heaven***" et al -->> and all of that ***HAS TO BE RIGHTED*** et al! [lighting bolt icon]

19) And so, I am making my complaint against the ***unfair, falsely misleading/mis-conductful incompetence*** of Mr. Timothy Hurlbert/Counsel for the Minister of Justice and Solicitor General and his totally biased""*Written Submissions of the Minister of Justice and Solicitor General of Alberta*" (of July 12/2016) that he is using to curtail me while defaming absolutely innocent and ethically right me.

...

21) Note: on May 29/2016, I had a para-normal revealing dream that ***showed me*** that "*they*" were ***planning/plotting to deliberately*** turn-down ***MY*** three individual *judicial reviews on June 7, 2016* -->> and so I then right-away faxed that point to the *Prime Minister of Canada*; etc.

[Format and style in original.]

This further illustrates Ms. Hok's hostile posture to even neutral parties: 'You are with me, or against me.'

[43] Ms. Hok has had an opportunity to respond to the findings made in ***Hok #1***. Her submissions allege that any and all criticism she has received is false, and that those who have not accepted her position are corrupt, biased, and incompetent. She claims that her cause is just, and she promises she will continue her activities until her neighbors, the "U of A Mafia", and their co-conspirators in the police, Crown Prosecutor's office, and judiciary are disciplined.

[44] Ms. Hok's submissions indicate she does not recognize that her actions are illegal or rationally connected to the substance of any injury she has experienced. I conclude her attacks will continue. Ms. Hok promises exactly that.

[45] Ms. Hok's identified misconduct is in all three Alberta courts, and she self-reports making many more complaints. The range of persons she sees as wrongdoers and warranting sanction is clearly expanding. As she identifies more 'conspirators', they too become potential targets.

[46] Ms. Hok's personal history and stated intention makes it clear that her inappropriate dispute activity has increased in size and scope. There is no reason to believe that pattern will change.

[47] As a result, Ms. Hok is a person who is an appropriate target for broad, global court restrictions, in all those forums where this Court has a jurisdiction to act. I therefore prohibit Ms. Hok from initiating or continuing any litigation in the Provincial Court of Alberta, or Court, without leave of an appropriate chief judge or justice. I would extend that prohibition to the Alberta Court of Appeal. However, given the unsettled nature of its jurisprudence, I will not take that step, though I believe it is highly likely that Ms. Hok's litigation abuse will continue in that Court.

[48] Ms. Hok's history, her pattern of conflict escalation and expansion, and Ms. Hok's stated intentions are a basis to restrict her future court access by requiring her to obtain leave to initiate or continue an action, under either the *Judicature Act* or alternatively via this Court's inherent jurisdiction.

[49] I therefore conclude that Ms. Hok's right to initiate or continue litigation in this Court and the Provincial Court should be prohibited, except with leave of the Chief Justice, Associate Chief Justice, or Chief Judge of those Courts.

VII. Court Order

[50] In ***KE,*** Browne J at paras 35-38, recommended seven elements that should be present in a court order that restricts court access so that the scope of the restriction is clear, the authority on which the order is made is explicit, to provide instructions on how a leave application should be structured, and to whom that application ought to be directed. I have adapted the elements and structure used in ***Boisjoli,*** para 110.

[51] I order:

1. Shirley Anne Hok is prohibited, under the inherent jurisdiction of the Alberta Court of Queen's Bench and *Judicature Act*, ss 23-23.1, from commencing, or attempting to commence, or continuing any appeal, action, application, or proceeding in the Court of Queen's Bench or the Provincial Court of Alberta, on her own behalf or on behalf of any other person or estate, without an order of the Chief Justice or Associate Chief Justice, or Chief Judge, of the court in which the proceeding is conducted, or his or her designate.
2. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her designate, may, at any time, direct that notice of an application to commence or continue an appeal, action, application, or proceeding be given to any other person.
3. Shirley Anne Hok must describe herself, in the application or document to which this Order applies, by her exact full name ("Shirley Anne Hok"), and not by using initials, an alternative name structure, or a pseudonym.

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

   (i) attaching a copy of the order issued herein, restricting Shirley Anne Hok's access to the Alberta Court of Queen's Bench and Provincial Court of Alberta,

   (ii) attaching a copy of the appeal, pleading, application, or process that Shirley Anne Hok proposes to issue or file or continue,

   (iii) deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it,

   (iv) indicating whether Shirley Anne Hok has ever sued some or all of the defendants or respondents previously in any jurisdiction or court, and if so providing full particulars,

   (v) undertaking that, if leave is granted, the authorized appeal, pleading, application or process, the order granting leave to proceed, and the affidavit in support of the order will promptly be served on the defendants or respondents, and

   (vi) undertaking to diligently prosecute the proceeding.

5. Any application referenced herein shall be made in writing.

6. The Chief Justice or Associate Chief Justice, or Chief Judge, or his or her delegate, may:

   (i) give notice of the proposed claim or proceeding and the opportunity to make submissions on the proposed claim or proceeding, if they so choose, to:

      a) the involved potential parties,

      b) other relevant persons identified by the court, and

      c) the Attorney Generals of Alberta and Canada.

   (ii) respond to the leave application in writing; and

   (iii) hold the application in open court where it shall be recorded.

7. Leave to commence or continue proceedings may be given on conditions, including the posting of security for costs.

8. An application that is dismissed may not be made again.

9. An application to vary or set aside this Order must be made on notice to any person as directed by the Court.

[52] This order takes effect immediately.

VIII. Conclusion

[53] I exercise this Court's inherent jurisdiction and order that Ms. Hok is prohibited from initiating or continuing litigation in the Alberta Provincial Court and Alberta Court of Queen's Bench, without leave of the appropriate Chief Justice, Associate Chief Justice, or Chief Judge. The facts of this case also warrant the same result pursuant to the authority granted by the companion *Judicature Act*, ss 23-23.1 provisions. I do not extend that

restriction to the Alberta Court of Appeal in light of the jurisprudence that addresses court participant access for that institution.

[54] Ms. Hok's submissions indicate this Court is only one of a number of forums where she has advanced her allegations and claims. Given this Court's inherent jurisdiction, other tribunals that cannot legally restrict Ms. Hok may make applications to this Court to restrict abuse of their processes.

Dated at the City of Grande Prairie, Alberta this 20th day of November, 2016.

Gerald A. Verville
J.C.Q.B.A.

Appearances:

Shirley Anne Hok
for herself

Timothy Hurlburt Q.C.
Litigation Services Division
Civil Law - Litigation
for the Alberta Justice and Solicitor General

TAB 3

JUDICATURE ACT

Chapter J-2

Table of Contents

(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

conducted, a clerk of the Court or the Minister of Justice and Solicitor General or, with the permission of the Court, any other person.

(3) The Minister of Justice and Solicitor General of Alberta has the right to appear and be heard in person or by counsel on an application or a Court's motion under subsection (1) or (4).

(4) The Court may at any time on application or on its own motion, with notice to the Minister of Justice and Solicitor General, make an order under subsection (1) applicable to any other individual or entity specified by the Court who in the opinion of the Court is associated with the person against whom an order under subsection (1) is made.

(5) An order under subsection (1) or (4) may not be made against a member of The Law Society of Alberta or a person authorized under section 48 of the *Legal Profession Act* when acting as legal counsel for another person.

(5.1) Subject to the *Alberta Rules of Court*, any party to a proceeding under subsection (1) or (4) before the Provincial Court, the Court of Queen's Bench or a single justice of the Court of Appeal may appeal an order under subsection (1) or (4) to the Court of Appeal.

(6) Subject to the right to appeal an order made under subsection (1) or (4), the Court of Appeal or the Court of Queen's Bench may make an order made under subsection (1) or (4) binding on any one or more of the other Courts referred to in section 23(1)(b), but an order under subsection (1) or (4) made by the Provincial Court is binding only on that Court.

(7) A person against whom an order has been made under subsection (1) or (4) may apply to a Court for permission to institute or continue a proceeding in that Court and the Court may, subject to any terms or conditions it may impose, grant permission if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding.

(8) With respect to an application under this section before the Court of Appeal, the matter may be heard by a single justice.

(9) Nothing in this section limits the authority of a Court to stay or dismiss a proceeding as an abuse of process or on any other ground.

RSA 2000 cJ-2 s23;2007 c21 s2;2013 c10 s20; 2013 c23 s8;2014 c13 s29

TAB 4

Chutskoff v Bonora, 2014 ABQB 389 (CanLII)

Date: 2014-06-24
Docket: 0803 06510
Other citations: 590 AR 288; [2014] CarswellAlta 1040
Citation: Chutskoff v Bonora, 2014 ABQB 389 (CanLII), <http://canlii.ca/t/g7n19>, retrieved on 2017-07-26

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 Testamen t of Charles Chutskoff, Deceased

Plaintiff

- and -

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

Defendants

Memorandum of Decision of the Honourable Mr. Justice Peter Michalyshyn

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
3. this act then compromised Dr. Chutskoff's ability to respond to the historically successful registration of the Saskatchewan judgment.

[2] This matter was taken into case management assigned to me on April 9, 2013. On May 31, 2013 Dr. Chutskoff made an application that relates to his legal capacity to direct this action. Dr. Chutskoff's application was heard on Sept. 16, 2013 but Dr. Chutskoff asked for and was granted the opportunity to make further submissions. Those submissions were ultimately received some nine months later on May 9, 2014.

[3] This decision addresses Dr. Chutskoff's application as a secondary issue. After review of the filed materials and Dr. Chutskoff's extensive litigation history I conclude that the RMRF Action should be terminated immediately on the basis that it is vexatious litigation: *Alberta Rules of Court*, Alta Reg 124/2010, *Rules* 4.11(d), 3.682(c) or (d) [the "*Rules*", or individually a "*Rule*"]. My review also leads me to conclude it is appropriate that Dr. Chutskoff be declared a vexatious litigant, per *Judicature Act*, RSA 2000, c J-2, s 23.1.

II. The Timeline

[4] The RMRF Action is the latest installment in a set of related legal actions that grew from a dispute in Saskatchewan over the administration of a will. That ultimately led to litigation in Alberta. A broad review of this history is necessary both to place the RMRF Action into context, and to appreciate the nature of Dr. Chutskoff's in-court activities to date.

A. The Charles Chutskoff Will Action

[5] Charles Chutskoff died on August 22, 2001. He was resident in Saskatchewan and left an estate of over $1 million. Dr. Chutskoff and John Chutskoff were named as executors of Charles Chutskoff's estate. Angeline Ruskin advanced claims against the estate under the *Family Property Act*, SS 1997, c F-6.3 and the *Dependants' Relief Act*, 1996, SS 1996, c D-25.01 [the "Will Action"]. Ruskin argued the will did not properly account for her share of family property and did not provide adequate support. The executors contested that claim and took the position that the common law relationship between Charles Chutskoff and Ruskin had ended years before, and Ruskin had received gifts that negated a *Dependants' Relief Act* claim.

[6] This litigation led to a series of reported judgments. In ***Ruskin v Chutskoff Estate***, 2002 SKQB 481 (CanLII), 226 SaskR 139 Dr. Chutskoff unsuccessfully challenged the validity of the Minutes of Settlement of a pre-trial settlement conference which had effectively resolved the dispute. The text of this agreement is reproduced in full at para 4 of ***Chutskoff Estate v Ruskin Estate***, 2004 SKCA 107 (CanLII), 243 DLR (4th) 432. Dr.

Chutskoff argued an admitted incomplete disclosure of Ruskin's family property invalidated the pre-trial settlement (para 5). The estate halted payment of $312,000.00 to Ruskin on that basis (para 17). That payment would have settled the dispute. The second executor, John Chutskoff, did not appear or make submissions.

[7] On March 4, 2003, Sarah Wilson replaced John Chutskoff as an executor of the Charles Chutskoff estate. The Queen's Bench result was confirmed on appeal (***Chutskoff Estate v Ruskin Estate***, 2004 SKCA 107 (CanLII), 243 DLR (4th) 432), where a unanimous panel concluded the Ruskin misrepresentation was inadvertent, and that a failure to disclose $20,000.00 in property was no basis to unwind an agreement that involved much larger sums: paras 38-42. The Supreme Court of Canada subsequently denied leave: ***Chutskoff Estate v Ruskin Estate***, [2004] SCCA No 440. Up to this point Dr. Chutskoff was represented by counsel. He then personally on May 27, 2005 filed a late and incomplete motion for reconsideration to the Supreme Court of Canada. That application was subsequently rejected by the Registrar on Jan. 10, 2007.

[8] At this point the result of the Will Action crystalized. The pre-trial settlement between the executors and Ruskin was found as binding and enforceable. By this time Ruskin had died, but her estate continued attempts to enforce the Will Action judgment.

B. The Alberta Registration Action

[9] With the Wills Action concluded the Ruskin Estate attempted to enforce its success in Alberta [the "Registration Action"]. What followed is detailed in a written decision of Justice Ross of this court: ***Ruskin Estate v Chutskoff Estate***, 2007 ABQB 108 (CanLII), 414 AR 164.

[10] On April 13, 2006 the Ruskin Estate made an *ex parte* application under the *Reciprocal Enforcement of Judgments Act*, RSA 2000, c R-6 to register the Will Action result in Alberta. That was granted on April 13, 2006 by Master Wachowich. On May 26, 2006 the Chutskoff estate, then self-represented, filed a Notice of Motion to set aside the *ex parte* registration, but that was struck when no special chamber brief was filed. A second hearing was scheduled and this was heard by Justice Ross on Jan. 19, 2007. In written reasons she concluded that:

1. the attempt to challenge the Wills Action registration was outside a one-month limitation period (para 41),
2. that period could not be extended (para 43), and
3. even though the Supreme Court of Canada reconsideration application was still live at the time the Will Action was registered, a stay was not appropriate because the Chutskoff Estate had not established a serious possibility of success in that application (para 50).

[11] The Chutskoff estate was represented at the Jan. 19, 2007 hearing. On May 11, 2007 Ross J ordered that Dr. Chutskoff was prohibited from further dealing with the assets of the Chutskoff Estate: ***Chutskoff Estate v Ruskin Estate; Ruskin v Chutskoff Estate***, 2011 SKCA 10 (CanLII), 366 SaskR 166 at para 11.

C. The Saskatchewan Trustee Advice Action

[12] The next development was in Saskatchewan and is documented in that province's Court of Appeal decision of ***Chutskoff Estate v Ruskin Estate; Ruskin v Chutskoff Estate***, 2011 SKCA 10 (CanLII), 366 SaskR 166. Dr. Chutskoff (now self-represented) filed several motions [the "Trustee Action"] in the Saskatchewan Court of Queen's Bench in May of

2010: paras 12-13. These ostensibly relate to questions on the administration of the Charles Chutskoff estate trust property but also target the result of the Will Action.

[13] Dr. Chutskoff did not attend the May 21, 2010 hearing due to confusion on the date on which these applications were scheduled to be heard. At that chambers hearing the Trustee Action application was struck out, identified as frivolous and vexatious, and Dr. Chutskoff was made the subject of a vexatious litigant declaration to limit his capacity to initiate court actions: para 16. These three results were later globally reversed by the Saskatchewan Court of Appeal on the basis that Dr. Chutskoff was not present, had not responded due to the scheduling confusion (paras 17-25), and because the vexatious litigant declaration had not conformed to the procedure set in *Rule* 662 of the *Saskatchewan Rules of Court* (paras 26-28).

[14] The Court of Appeal also permitted Dr. Chutskoff to argue his claim that the Will Action should be overturned. This was an unusual step taken by that court in an attempt to resolve this matter and provide finality:

> 30 In the course of hearing this appeal, Dr. Chutskoff (who appeared without counsel) was given a full opportunity to explain his position and to advance his arguments in relation to the substance of the May 12 and May 19 Motions. As a result, this Court is in a position to deal with their merits. It is appropriate to follow this course of action in view of the long and difficult history of the litigation that has attended the attempts to resolve the claims of the Ruskin Estate. Justice requires that, in the unusual circumstances of this case, this Court do what it can to obviate the need for further proceedings.
>
> ...
>
> 32 What then of the merits of the May 19 Motion? Although it is drafted in rather opaque terms, its bottom line is clear. Dr. Chutskoff seeks various orders aimed at the ultimate purpose of attempting to vacate the 2002 decision of Koch J. - the decision awarding $312,000 from the Chutskoff Estate to Ms. Ruskin. This is the goal that has preoccupied Dr. Chutskoff for some years.
>
> 33 Dr. Chutskoff says the grounds of relief in the May 19 Motion begin with attempts to seek clarification from the Court as to his capacity to act as an executor of the Chutskoff Estate and clarification as to the legal status of certain land in Saskatchewan relative to the Estate. This is true, but it is also apparent that these issues are entirely submerged in the main objective of the motion which, as noted, is to vacate Koch J.'s decision. Thus, for example, the relief referred to in subparagraphs 1(d), (e) and (f) of the Notice of Motion build to the question, referred to in subparagraph (f), of whether the trustees of the Chutskoff Estate can bring a new action aimed at defeating the decision of Koch J. Paragraph 2 of the "relief sought" section of the Notice of Motion is equally clear in that it asks for a stay of the enforcement proceedings in relation to the Koch decision pending a new action to vacate the decision. The substance of paragraph 3 of the "relief sought" section of the Notice of Motion is to the same effect. It seeks orders aimed at facilitating the preparation of new proceedings directed at attacking the decision of Koch J. and again asks, at subparagraph (f), for an order barring the execution of that decision. [Emphasis added.]

[15] Dr. Chutskoff advanced what he claimed was evidence of "extraneous or collateral fraud", including "planted prejudicial evidence" (para 34), and allegedly forged signatures (para 35).

[16] The Court observed this argument was without merit and disclosed his repeated litigation pattern (para 30):

... Dr. Chutskoff has tried unsuccessfully in several previous proceedings to upset the decision of Koch J. The Motions in issue here are, in substance, merely another attempt at achieving the same goal. Unfortunately, Dr. Chutskoff has not demonstrated that there is any new evidence of fraud which might impugn Koch J.'s conclusions or the subsequent decision of this Court confirming his decision. It follows that, considered on their merits, neither the May 12 Motion nor the May 19 Motion can succeed. [Emphasis added.]

The Court concluded that while the Saskatchewan Queen's Bench chambers judge had not provided Dr. Chutskoff with an opportunity to respond, she was, nevertheless, correct in the result and that substantively Dr. Chutskoff's action was hopeless (para 38).

[17] Dr. Chutskoff's subsequent application to the Saskatchewan Court of Appeal for a re-hearing with fresh evidence was rejected on the basis that there was no new evidence: ***Chutskoff Estate v Ruskin Estate***, 2011 SKCA 47 (CanLII).

D. The Alberta Enforcement Action

[18] After the Will Action was registered in Alberta in 2006 the Ruskin estate attempted collection proceedings on that action from the Charles Chutskoff estate: ***Chutskoff Estate (Re)***, Docket # ES06 10648 [the "Enforcement Action"]. This effort was ultimately frustrated by the discovery that the estate funds had been entirely depleted.

[19] On September 26, 2010 Justice Miller issued a decision reported as ***Chutskoff Estate (Re)***, 2014 ABQB 341 (CanLII) in response to an application by the Ruskin estate to collect the Will Action award from Dr. Chutskoff and his daughter Sarah Wilson. At that time these two were joint personal representatives of the Charles Chutskoff estate. It had emerged by that point that practically nothing remained of the over $1 million Charles Chutskoff estate: para 1. The incomplete accounting that was available indicated that the estate had been largely consumed by Dr. Chutskoff and his activities: paras 24-25.

[20] Justice Miller provides a detailed review of the chronology of the many unsuccessful attempts made between 2006 and 2012 to collect the Ruskin Will Action award and Dr. Chutskoff's ongoing efforts to frustrate that process: paras 3-14, 29-52. Justice Miller observes that rather than respond to the Enforcement Action's substantial issues Dr. Chutskoff instead made repeatedly and futilely attempts to re-argue the substance of the Will Action. He alleged Ruskin had committed fraud: paras 9-12. He attacked the conduct of judges involved and demanded they recuse themselves: paras 12-14.

[21] Evidence on the condition of the Charles Chutskoff estate is surveyed at paras 15-20. Both Ms. Wilson and Dr. Chutskoff were uncooperative and evasive in accounting for what had happened after Charles Chutskoff's death. Justice Miller notes the claims and gifts of every specific beneficiary or creditor other than Ruskin were distributed by March, 2003: para 24. The estate had claimed $641,782.04 in expenses, including over $150,000 in "office supplies", and $400,000 in trustee compensation: paras 25-26. The details of these expenditures were largely undocumented (para 27):

To substantiate these claims, Dr. Chutksoff has never filed a single financial document in neither the estate matter nor the Edmonton Action. He has never provided any explanation for the expenditures.

[22] Justice Miller concluded that as a personal representative Ms. Wilson was liable for the depletion of the estate. Ms. Wilson and Dr. Chutskoff were uncooperative (para 64):

... Both have had ample opportunity to put the estate's financial position and their justifications for it before the Court. Nothing will be gained from further flouted Court orders, which no doubt given the history of this matter will most definitely be ignored by Ms. Wilson and Dr. Chutskoff.

[23] The court also rejected an argument that the estate was already depleted prior to Ms. Wilson's involvement: paras 65-70. She argued her involvement was minimal; she too was duped by her father: paras 75-77. That, however, was no excuse, as if Ms. Wilson had abdicated her responsibilities then she had breached her duties as a personal representative by this unreasonable conduct: para 79. An award of $308,657.39 was ordered against Ms. Wilson personally (para 82), and she was found in criminal contempt of court for her continual and escalating disregard for court orders: para 89.

[24] Justice Miller concludes that Dr. Chutskoff's conduct resulted in a "plethora of breaches" of his duties as a personal representative. This included a wide range of accounting and legal fees, office supplies, travel costs, and $369,356.70 that Dr. Chutskoff paid to himself out of the Charles Chutskoff estate: para 90. Miller J concludes: "... the expenses and compensation charged to the estate are excessive and unsupportable."

[25] Dr. Chutskoff was in a conflict of interest as the residual beneficiary of the estate: para 91. He was wrong to continue to argue the conclusion in the Will Action was based in fraud: para 91. He was in breach of numerous court orders: paras 92-93. Justice Miller concludes at para 94:

Dr. Chutskoff has used the estate as his own personal bank account, and has failed to distinguish between his entitlement as residual beneficiary and his responsibilities as personal representative. His actions as a personal representative have been dishonest and unreasonable. He is in breach of his duties as personal representative of the estate of Charles Chutskoff. I award judgment against him in the sum of $309,654,39.

[26] On its own motion the Court found Dr. Chutskoff in criminal contempt of court for his breach of court orders. Justice Miller concludes that Dr. Chutskoff never intended to honour orders that restricted his use of estate funds: para 96. His misconduct was more serious than that of Ms. Wilson as he was the perpetrator of the contempt, and his actions then pushed Ms. Wilson to take illegal steps that she would not have otherwise done: para 97.

[27] Dr. Chutskoff was sentenced to 30 days gaol for his criminal contempt of court, but was released on compassionate grounds on Oct. 19, 2012 by an order of Ross J. His house arrest was extended for another 27 days on October 23, 2013 as Dr. Chutskoff had not purged his contempt. On Nov. 27, 2012 Justice Miller confirmed Dr. Chutskoff had finally purged his contempt.

[28] The most recent Enforcement Action decision was an application to restore an appeal of the Miller J contempt sentence: ***Ruskin Estate v Chutskoff Estate***, 2013 ABCA 276 (CanLII). Counsel for Dr. Chutskoff filed this appeal on Oct. 18, 2012 in response to the contempt of court order issued that day: para 5. Dr. Chutskoff personally appeared at the Court of Appeal in relation to that action on Jan. 9, 2013, stated he wished to amend his Notice of Appeal, but did not file a factum by the deadline of April 7, 2013: para 9. Dr. Chutskoff did not appear at the next speak to the list hearing (May 15, 2013), and his appeal was struck: para 10.

[29] On July 25, 2013 Justice Slatter heard Dr. Chutskoff's application to revive and amend the appeal. Dr. Chutskoff explained he had collected over 500 pages in support of his application to amend his Notice of Appeal and as a consequence he was not yet ready to amend his Notice of Appeal. His factum was also not yet ready: para 13.

[30] Dr. Chutskoff's application was rejected by Justice Slatter, in part due to his persistent litigation strategy and repeated failure to meet deadlines (para 14):

There is also considerable prejudice to the respondents by this never-ending litigation. The estate has been subjected to litigation for over 12 years, and the applicant has shown an unwillingness to accept the finality of many previous decisions of the Alberta and Saskatchewan courts on the merits. The estate has been depleted, partly by substantial legal fees. If the applicant wishes to persist in this litigation, he is under an obligation to meet all deadlines, and to scrupulously comply with the Rules of Court.

[31] Furthermore, the application was moot as the appeal was only to the 30 day sentence ordered by Miller J; by now Dr. Chutskoff had spent 57 days in detention: para 15. Dr. Chutskoff also explained that his proposed change to the subject of the appeal was a complaint that the Queen's Bench court file had been located in the incorrect judicial center. Justice Slatter rejected that as a meritless argument (para 16):

… The application to amend would now apparently extend the appeal to the whole of the order, including the substantive finding of contempt. The proposed grounds of appeal are highly technical, and without any obvious merit. For example, the applicant wishes to argue that there is some flaw in the decision because the file was located in the Judicial Center of Edmonton, whereas the application was heard in Lethbridge.

[32] Dr. Chutskoff's attempt to expand the appeal to address subsequent court orders was also out of time: para 17.

E. Other Related Activities

[33] Dr. Chutskoff has also initiated complaint proceedings against lawyers and judges. Some of this activity is reviewed in ***Chutskoff Estate v Ruskin Estate; Ruskin v Chutskoff Estate***, 2011 SKCA 10 (CanLII), 366 SaskR 166 at para 10:

Dr. Chutskoff had issues with lawyers and judges in the course of these various proceedings. He reported the Ruskin Estate's lawyer to the Law Society of Saskatchewan and to the Saskatchewan Human Rights Commission. Both complaints were dismissed. He changed his own lawyers multiple times and reported one of them to the Law Society. That complaint was dismissed. In addition, Dr. Chutskoff filed a complaint with the Canadian Judicial Council about the conduct of the Queen's Bench judge who had conducted the pre-trial conference that had yielded the Minutes of Settlement underlying the decision of Koch J. It too was dismissed.

[34] This pattern of attack on judges is also reported in Justice Miller's decision at paras 12-14:

> [12] This allegation has been argued and dismissed by various courts in Saskatchewan, by the Supreme Court, and by the Alberta Court of Queen's Bench, including by myself. I have previously warned Dr. Chutskoff not to continue making this futile allegation. Dr. Chutskoff's response to this warning is to now argue that I have demonstrated a reasonable apprehension of bias by refusing to listen to his argument, and that I should recuse myself. I note, with interest, he has

also made allegations of bias against Koch J. after he entered judgment on the Minutes of Settlement, and Ross J . after she seized herself with the contempt proceeding against Dr. Chutskoff in the Edmonton Action. When a judge makes a decision that is not in Dr. Chutskoff's favour, he accuses them of bias.

[13] Dr. Chutskoff's allegations of bias against me have now crystallized with his filing of an ex parte application to have me recuse myself. The application was filed on September 24, 2012, two days before this matter was set in Court for me to render my decision on whether the personal representatives are in contempt and should have judgment awarded against them personally.

[14] Dr. Chutskoff's application that I recuse myself is denied.

F. The RMRF Action

[35] Mr. Chutzkoff initiated the RMRF Action on May 9, 2008. In brief, the Statement of Claim pleads that Dr. Chutskoff is the executor of the Charles Chutskoff estate, and that Dr. Chutskoff and the Defendants first learned of the *ex parte* registration in Alberta of the Will Action judgment on April 19, 2006. The claim alleges that on May 4, 2006 Dr. Chutskoff met with Defendant Bonora to plan an application to set aside registration of the Will Action in Alberta. Bonora allegedly said she would not represent Dr. Chutskoff but that another lawyer at Reynolds, Mirth, Richards & Farmer LLP ("John Doe") would do so. However, on May 12, 2006 Bonora informed Dr. Chutskoff that the Defendants would not represent him.

[36] The deadline to respond to registration of the Will Action judgment was May 19, 2006. Dr. Chutskoff claims he was unable to prepare "required documentation" in time, and as a consequence his application was dismissed.

[37] Dr. Chutskoff also claims at para 11 to have a basis to challenge registration of the Will Action judgment:

At all material times the Plaintiff believed that there was sufficient evidence to successfully set aside the registration of the [Will Action judgment] and that Bonora, John Doe, and RMRF would represent the Estate in this regard.

[38] Dr. Chutskoff claims the Defendants were negligent or breached their fiduciary duty to him. He claims the Wills Action judgment would have been effectively and successfully challenged if the Defendants had continued to represent him. Dr. Chutskoff claims special damages to be proven at trial, $400,000.00 in general damages, interest per the *Judgment Interest Act*, RSA 2000, c J-1, and costs.

[39] An Amended Statement of Claim was filed on May 7, 2009. The only variation from the Statement of Claim is the remedy, which is now judgment for $400,000.00, in the alternative $400,000.00 in general damages, or again in the alternative special damages of $400,000.00. Dr. Chutskoff was up to this point represented by counsel.

[40] The Defendants filed a Statement of Defence on Nov. 6, 2009 which:

1. denies the Defendants caused Dr. Chutskoff's failed attempt to set aside registration of the Wills Action judgment,
2. states the Defendants had refused to represent Dr. Chutskoff, and
3. argues Dr. Chutskoff could have retained other counsel to assist him.

The Defendants go on to say that any failure was Dr. Chutskoff's own fault. The Defendants also say that his attempt to resist registration of the Wills Action judgment was hopeless, as any appellate challenge to that judgment had been exhausted. The Defendants say that filing a defence for Dr. Chutskoff in the Registration Action would have breached the Defendants' ethical duties. The Defendants would have engaged in frivolous, vexatious and abusive litigation if they acted on Dr. Chutskoff's behalf.

[41] In March of 2010 Dr. Chutskoff's lawyer withdrew from the RMRF Action. To date Dr. Chutskoff remains unrepresented.

1. The first application for a litigation representative

[42] The next step in the RMRF Action was an application by the Defendants for advice and direction on the possible appointment of a litigation representative for Dr. Chutskoff. This application was heard by Justice Ross on Dec. 18, 2012. It was dismissed in a written judgment of Feb. 21, 2013: ***Chutskoff Estate v Bonora***, 2013 ABQB 119 (CanLII). She concluding that Dr. Chutskoff's litigation history and his own court material did not support the proposition "... that he is unable to appreciate the issues before the court and articulate a position on those issues.": para 22. This was demonstrated by Dr. Chutskoff's litigation history while self-represented (para 22). Ross J at para 23 concludes:

There is no basis, on the evidence before me, to conclude that the Respondent lacks capacity as defined in Rule 2.11(c). I will not direct the appointment of a litigation representative under Rule 2.15.

[43] The chief evidentiary defect identified by Justice Ross related to the evidence of Dr. Lorne Warneke, a psychiatrist who indicated he had treated Dr. Chutskoff for OCD from 1997 onward. His evidence (an affidavit, unsworn letters and reports) had been filed in the Enforcement Action before Justice Miller: paras 12-16. Justice Ross put no weight on this evidence as Dr. Warneke had qualified his opinions and did not respond to issue at bar: whether Dr. Chutskoff had capacity to understand relevant information and appreciate the consequences of his decision: para 20.

[44] However, Justice Ross left open the possibility that Dr. Chutskoff could himself make an application for a litigation representative in the RMRF Action, provided the application was supported by the appropriate evidence: para 24. She then recused herself from this action due to a conflict of interest: para 27.

[45] The action next was directed into case management. The chief subject of the first case management meeting on June 4, 2013 was Dr. Chutskoff's own application for a litigation representative.

2. The second application for a litigation representative - initial submissions

[46] Dr. Chutskoff filed written submissions on May 31, 2013. He claims gross disadvantage as an "unrepresented litigant", persecution on that basis, and that the keystone to this entire litigation arises:

> 2.4.1 ... from the same FACT:
>
> 2.4.1.1 The trust assets of the Estate were put at risk to fraudulent conversion as early as March 2002. I instructed Ms. Bonora et al to protect those trust assets from harms-way.

> 2.4.1.8 THE QUESTION in this action: Were it but for the alleged breaches of Ms. Bonora et al. would those pecuniary losses [leave to rest for the moment the non-pecuniary injuries] have occurred, or alternatively would they have been substantially mitigated?
>
> 2.4.1.9 THE EXISTING UNADJUDICATED EVIDENCE IN SUPPORT OF THE ALLEGATION OF A FRAUD-ON-THE-COURT: Madam Justice Janice McMurtry of the SKQB executed on February 15, 2006 Schedule 2, [a regulatory certificate to REJA and from my perspective an authority in its true-form required to validate the ex parte registered [Default] Judgment of Master Wacowitch entered April 18, 2006] by FASELY-SWEARING [sic] to the truth at paragraph (1) therein and then her Ladyship JUDICIALLY-WITENESSED & SEALED the certificate affirming to its truth. The law presumes Madam Justice McMurtry is responsible for providing false-witness testimony. Is a parallel criminal-proceeding required or is there some simplified way to determine if Madam Justice McMurtry was induced to seal false-witness testimony?

[47] Dr. Chutskoff continues to complain the entire judicial history of this action is a fraud, "[t]he judicial-oath requires conclusions to be based only on a reasoned analysis of the evidence; not on conclusions made under the influence of fraudulent submissions and tampered evidence.", and that he must be represented by a lawyer "as justice demands." (para 2.5.4). Dr. Chutskoff promises that "the necessary affidavits will be filed." in relation to the capacity issue (para 2.9). He argues two apparently incompatible positions: he believes his action against the prior litigation is viable, but nevertheless he lacks capacity to understand this litigation:

> 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.
>
> 3.3.2 Opacity has littered this litigation matter like a "train-wreck" collaterally circumferentially litters all with the power to destroy. Not only do the reckless engineers suffer; but sadly those with privity to me and who thereby share my DNA have paid even a higher price for being too near to this train-wreck.

[48] At the June 4, 2013 hearing Dr. Chutskoff indicated he expected to have a capacity assessment report from Dr. Warneke within the next three months.

3. August 2013 Submissions

[49] Subsequent to the first case management hearing Dr. Chutskoff wrote two letters to the court, dated August 14 and August 22, 2013. These include correspondence between Dr. Chutskoff and defence counsel, between other parties, as well as other documents including the Alberta Court of Appeal Enforcement Action decision of Slatter JA.

[50] In the August 14 package Dr. Chutskoff states at para 3.1 of a Aug. 12 letter:

I am able to assure the Court and Mr. Cranston that I am confident that the expert-opinion medial evidence of Dr. Warneke, MD, FRCPC with regard to; the nature of my chronic mental-health disability [Obsessive-Compulsive-Disorder-OCD] and the effect that that disability may have on the whole of my cognitive ability or (lack thereof) to appear before

this Court as a "capacitated litigant" will be available for a hearing on this issue on the direction of the Court.

[51] However, Dr. Chutskoff then switches his emphasis to a challenge of previous litigation results. He says the expert evidence of his capacity is not enough, rather the court must first return to his other Charles Chutskoff estate actions. In a section entitled "Grounds for the Applicant's Position", Dr. Chutskoff then attacks the correctness of Slatter JA's decision in the Enforcement Action.

[52] The August 22, 2014 letter is brief, and indicates that Dr. Chutskoff in correspondence to defence counsel has:

... proposed that an alternative application be heard on my behalf rather than the anticipated application with regard to the undersigned's "capacity" to commence, defence, or conduct "civil-litigation" in this Action No. **or** in any of the related Action Nos currently associated with the Estate of Charles Chutskoff. [Emphasis in original.]

[53] In an attached Aug. 21, 2013 letter to defence counsel Dr. Chutskoff identifies this "alternative application" as:

- "6.1.2.1 **The common-law & statutory principles of trust-law** which speak to the "standing" of a trustee before a supervising court." [emphasis in original];
- whether Dr. Chutskoff has "standing/authority" to seek "relief to reconstitute the value of the express-trust" (para 6.1.2.1.1);
- his duties to the beneficiaries of the Charles Chutskoff estate (para 6.1.2.1.2); and
- a further challenge to the Slatter JA Enforcement Action decision because of a "newly discovered issue" and that Dr. Chutskoff may be forced into bankruptcy (paras 6.2-6.2.2).

[54] Dr. Chutskoff's correspondence continues then to argue the RMRF Action should be "consolidated" with the Alberta Registration Action and Enforcement Action as that is "the most expedient & cost-effective determination of the ***Real Issue*** in question" [emphasis in original]:

> 7.4.1.1 As I have pleaded earlier before this Court, in my opinion, the **Real Issue** in the consolidated actions and the legal consequences arising therefrom is founded in several undisputed facts on the record, the most important of which is:
>
> 7.4.1.1.1 That the ***falsely-sworn judicially witnessed/certified*** Schedule 2 CERTIFICATE filed by Mary Waterhouse on April 13, 2006 in Action No. 0603 04815 under the governing provisions of the REJA statute [previously cited] which (allegedly) validated the ex parte [undefended & thereby default] Judgment of Master Wacowich issued April 18, 2006, [without the CERTIFICATE supra attached thereto; see 2007 ABQB 108 (CanLII) in its entirety] speaks, at the very least to an act of ***Bad Faith*** by Mary Waterhouse [or her privies & agents] in these proceedings.
>
> 7.4.1.1.2 I hold that this particular evidence of ***Bad-Faith*** permeates throughout all of the (proposed***) consolidated actions*** wherein the alleged "legally-incapacitated" Litigant Brian Chutskoff is an unwilling, un-represented, Party as a direct consequence of the court-record evidence of the ***Bad-Faith*** of Waterhouse (Ruskin) within these proceedings.
>
> [Emphasis in original.]

[55] In summary to this point, Dr. Chutskoff in his Aug. 21, 2013 correspondence proposes the court return to trustee and estate related issues, rather than the purported subject of this litigation: the Defendants' alleged misconduct, and Dr. Chutskoff's very capacity to bring the within application.

[56] The next material on file is a letter dated August 29, 2013 by Dr. Chutskoff to defence counsel, also entered in the court file. In the letter Dr. Chutskoff argues the legal test for when a person lacks capacity is unsettled and that evidence of his disability must be in the form of in-court testimony by his psychiatrist. However, Dr. Chutskoff then explains this evidence is necessary to address *whether his psychological impairment caused him to waste the Charles Chutskoff inheritance* (paras 6.2.1-6.2.2), not his *current* capacity in the RMRF Action.

[57] In the same August 29, 2013 material Dr. Chutskoff now disputes he ever promised to provide written expert evidence regarding his mental state and that was limited to his *present* condition (para 7.2.3).

4. Sept. 2013 Case Management Hearing

[58] The last case management hearing occurred on Sept. 16, 2013. At this point Dr. Chutskoff argued this Court should apply a UK legal test for capacity from ***Masterman-Lister v Brutton & Co***, [2002] EWCA Civ 1889 (UK CA). Further, he argued his evidence could not merely relate to his current mental state, *but had to be a retrospective survey back to 2001*. Dr. Chutskoff explained this evidence is necessary as it related to earlier proceedings that involved fraud, and the flawed decision of Justice Miller in the Enforcement Action. Dr. Chutskoff also indicated the court should address issues that specifically relate to the Charles Chutskoff estate, including his roles and conduct as both trustee and the estate's residual beneficiary. He repeated his intention that all previous litigation be "consolidated" in the RMRF Action.

[59] Both parties then submitted written arguments. The Defendants' brief, received Oct. 15, 2013, argues that the test for capacity is established by legislation, specifically the *Adult Guardianship and Trusteeship Act*, SA 2008, c A-4.2, s 1(d). The Defendants say ***Chutskoff Estate v Bonora***, 2013 ABQB 119 (CanLII) provides the correct application of that test: a psychiatric condition does not mean incapacity, and a litigation representative is required where an adult's state or condition blocks "capacity to understand relevant information or to appreciate the consequences of decisions relating to the within action." The Defendants conclude the UK common law ***Masterman-Lister v Brutton & Co*** approach is therefore irrelevant because the threshold for legal capacity has instead been set in Alberta by the Legislature.

[60] The Defendants' written material also explores the circumstances in which a judge may appoint an *amicus curiae*. The Defendants took no position as to whether that step is appropriate in these proceedings.

[61] Dr. Chutskoff filed a written brief on Nov. 21, 2013. Part of this brief is, in essence, a pre-emptive response to the Defendants' planned challenge to the validity of the RMRF Action (paras 7-13.3, 16.4, 19). That is irrelevant at the current point in the case management of this lawsuit. Dr. Chutskoff argues this action will necessarily involve re-litigation of other actions (para 17.1), and that this means "consolidation" is a live issue (para 17.2). Dr. Chutskoff seeks a global re-assessment of earlier court results:

17.6 However, on the issue of consolidation of actions the plaintiff asserts the position that should a case-management judicial-order be made for a trial-of-an-issue (including the issue

of the Plaintiff's 'capacity') AND barring a jurisdictional-conflict arising with the Court of Appeal of Alberta from the decision of Slatter J.A. 2013 ABCA 276 is sought AND from which the Proposed Appellant seeks on appeal to "quash" the entirety of the judicial conclusions arising from the in-facie contempt-of-court penal-proceedings of Miller J. involving actions **ES06 10648** [Probate File supra] & **0603 04815** [REJA File, Judicial Centre of Edmonton] these two actions, by necessity, [from the Plaintiff's position supra at para 17.1] must be considered for consolidation with the negligence action at 0803 06510.

In short, Dr. Chutskoff again maintains the issues in this lawsuit – including the issue of capacity – requires that the RMRF Action revisit the subjects of the Alberta Registration Action and the Enforcement Action.

[62] This theme continues as Dr. Chutskoff argues these earlier actions represent an "equitable-fraud perpetrated upon the Plaintiff by the Defendants." (para 18.1), caused by actions of Ms. Bonora in a 2003 proceeding in Lethbridge (para 18.2), that in turn led to Dr. Chutskoff's criminal contempt sentence (paras 18.2-18.5). These allegations form a new basis for litigation (para 20):

That the Plaintiff, [considering the assertions made at paras (16) to (16.3) herein in Part II *supra* with regard to his continuing fiduciary-obligations] *alleges* *'new & material facts'* in support of further amending pleadings including [Not inclusive]; obstruction of justice through evidence tampering by forgery & falsification of a judicial-certificate; fraudulent-conversion of trust funds; fraudulent-concealment & equiteable fraud; & unjust enrichment through deceit; ... [Emphasis in original.]

Again, Dr. Chutskoff indicates the RMRF Action must return to issues addressed in previous actions.

[63] A new element in these submissions is an argument that this matter is, at its heart, a question of "equal access to justice". Dr. Chutskoff argues that the lawyers in this matter are required to be "aggressively investigated" given their special status in court proceedings: para 22. Dr. Chutskoff at para 24 states he has suffered "catastrophic non-pecuniary harm" as a self-represented litigant because:

... he was the specifically-targeted victim of a trustee-de-son-tort whose motives were to cause the Plaintiff intended massive pecuniary-losses, a wrongful-conviction and unlawful incarceration by misleading a court and intentional or negligent infliction of mental suffering. ...

[64] Dr. Chutskoff also references various academic commentaries that suggest courts ignore litigation and arguments from self-represented litigants because of their source, rather than merit (para 17.5).

[65] Dr. Chutskoff argues that ***Chutskoff Estate v Bonora***, 2013 ABQB 119 (CanLII) provides no binding authority, and instead that Ross J did not actually evaluate whether Dr. Chutskoff did or did appear to demonstrate his capacity (para 33). He continues to argue he lacks "authority" to advance an application for a litigation representative (para 42). He is not an "interested person" as defined in the *Rules* (paras 43-44). Interestingly, this is not a basis for a litigation representative, but rather a reason why Dr. Chutskoff should have his *fiduciary obligations* as the trustee of the Charles Chutskoff Estate *transferred to another person* (para 45):

... the Plaintiff has concluded that it is in the perceived best-interests of the estate's beneficiaries that a [litigation representative] assume the fiduciary-obligations owed to the

beneficiaries based on a sufficiency of probative evidence that Brian Chutskoff lacks the capacity to make reasonable decisions ["judgmental-decisions" as described by Professor Smith supra] as a fiduciary because his chronic, progressive mental-health disorder has seriously impaired the "executive-functions of his brain.

[66] Dr. Chutskoff does not appear explicitly to agree with or to challenge whether an *amicus curiae* is appropriate in this case (paras 50-56).

5. May 9, 2014 Supplementary Material

[67] Dr. Chutskoff then requested permission to file a supplementary brief. The Defendants did not object to that. These materials were received by the Court on May 9, 2014, and make up four large volumes, 148 pages of which is argument. In light of the volume of this material I will only cite certain particularly relevant passages and group other arguments and materials by theme.

[68] Much of the Supplementary Material forms a "new& material fact-matrix":

> ... a continuously-concealed fraud, protected by vigorous detection-avoidance conduct involving both the named, known & unknown legal-professional actors AND certain named & unknown members of the Executive of the professional Regulator, the LSS, is proven from the clear & cogent evidentiary-record & which in direct contradiction to the clearly, overriding errors of judicial fact-finding; this fact-matrix was never tested on its merits.
>
> ... a sufficiency of clear & cogent evidence on the record [appended exhibited-evidence affidavit 21.12.12] proven following forensic examination; THAT, the initial extraneous-fraud, worded on the SKQB by a breach of statutory-prescriptions through forgery/personation of court-documents for a statutory-entitlement where no such entitlement existed in Feb/March 2002.

[69] Thus, Dr. Chutskoff challenges the original Will Action and its conclusion. His argument follows at length. He alleges "forged court-documents", "continuously-concealed, collateral-frauds", and judicial misconduct: "a "systemic, lack-of-judicial-candor " in historical judicial-fact-finding." [emphasis in original]. He is the target of:

> ... malicious adversaries whose intent was not only to intermeddle with the Estate's proper administration; but, whose intentions were to by unlawful-means through the prohibited acts of forgery, uttering forged court-documents, false-pretense, personation, perjury& a through the continuous abuse of the court's processes to fraudulently convert/steal the trust-assets under the Plaintiff's fiduciary-care ... [Emphasis in original]

[70] Those engaged in this conspiracy include participants in earlier actions, members of the judiciary, and legal profession regulators. All these parties have abused a vulnerable self-represented litigant with a psychiatric disorder. The allegations against members of the judiciary include, for example, that Justices Miller and Slatter were biased, incorrectly refused to recuse themselves, received a clear evidentiary record that they ignored, denied Dr. Chutskoff his rights to a fair trial, all in breach of their judicial obligations. Dr. Chutskoff says the result of the Enforcement Action is wrong and illegal. His *Charter* rights have been breached and denied.

[71] The Supplementary Materials also incorporate argument and commentary on alleged general and widespread mistreatment and persecution of self-represented litigants by Canadian judges. Dr. Chutskoff says he has been treated in this way.

[72] The mass of this material is entirely irrelevant to the issue of Dr. Chutskoff's capacity. Instead, Dr. Chutskoff argues at pp 123-135 that the "fact-matrix" of conspiracy, abuse, manipulation and fraud means that, given the amount at stake, he deserves legal assistance because he is a disabled, disadvantaged, and persecuted self-represented litigant. He says the "fact-matrix" is a miscarriage of justice and fraud that warrants support. Since Dr. Chutskoff claims he is impoverished, he says his legal assistance should be paid for by the state.

[73] However, this is not the only assistance sought. Dr. Chutskoff also seeks that his 'persecutors' be investigated and prosecuted by the Attorney General of Alberta. He also seeks a *Charter*, s 24(1) remedy to respond to the abuse he has suffered when his *Charter*, s 7, 11(d)& 12 rights were "judicially-violated" by the unlawful detention of Dr. Chutskoff by Justice Miller on Oct. 16, 2012.

[74] Pages 136-148 itemize the remedies Dr. Chutskoff now demands. These include:

1. he is replaced as the trustee of the Charles Chutskoff estate by a court-appointed legal representative who would assume Dr. Chutskoff's legal obligations;

2. a state-funded lawyer to execute the orders of that legal representative;

3. the Attorney General of Alberta institute criminal prosecutions as directed by this Court;

4. what are presumably a number of declarations, including

   a) that unfavourable court decisions in Saskatchewan and Alberta were a result of those courts being "repeatedly duped into issuing adverse orders";

   b) Dr. Chutskoff is the victim of "systematic-bias/institutional bias";

   c) the Law Society of Saskatchewan deceitfully failed to investigate Dr. Chutskoff's complaints;

   d) that Ruskin had limited, if any, entitlement to the Charles Chutskoff estate;

   e) that judges involved in previous related litigation breached their judicial oaths, specifically that Slatter JA engaged in an "intentional cover-up" of Miller J's "own-motion fatally-flawed criminal-procedure strategies";

5. $1,500,000.00 in "proprietary-losses" through "fraudulent-conversion/theft of trust-assets";

6. *Charter*, s 24(1) remedies, and

7. that this Court set aside all unfavourable Alberta appeal and trial judgments that involve Dr. Chutskoff.

[75] Perhaps the most significant content in the Supplementary Materials is found at pp 28-29 where Dr. Chutskoff discusses his mental condition:

> d. The Plaintiff's well-documented, un-remitting, repetitive, compulsive-behavioural-dysfunction, in part, continuously & unwillingly subjective engages him in involuntary-compulsions that are with particularity manifested when he is cognitively involved in the preparation of written and/or work-processed material conveyed thereto from his thought-processes; often referred to in evidence-based neuro-scientific research as the brain's "Executive-Functions." Compulsive-

behaviour manifestation that are related to circular executive-function activity may involve as experienced by the Plaintiff:

> i. Writing, reading, revising, re-organizing // re-writing, re-reading, revising, re-organizing // re-writing, re-reading, revising, re-organizing and so-on and so-on which is objectively perceived:
>
> ...
>
> ix. THAT, the Plaintiff is prepared to affirm with evidence in support that on this date; there exists a digital & certifiable record to prove that the preparation of [the Supplementary Materials] since it was initiated on 24.01.14 consists of 35 draft-editions in word format for a total of about 600,000 words AND
>
> x. THAT the Plaintiff's affirmation as to the truth of the adduced digital evidence excludes 4,000 printed research/case documents on the subject-matters herein.
>
> xi. Neither the expenditure of over 350 hours dedicated exclusively to both the preparation of the digital-editions of [the Supplementary Materials] nor the collection of 4,000 pinted pages of "Documents-in-Support" [DIS] of the objectives of [the Supplementary Materials] have in any purposeful-way satiated the Plaintiff's continuously-prejudicial, involuntary-ritualistic-behaviour pattern described supra.

[76] The remainder of the four volumes are an assortment of items. Some is case law, but many exhibits are case commentaries from 'blog' postings and public domain sources, academic articles, and editorials that discuss court and legal issues. Judicial misconduct is a theme in much of this material, along with articles that allege self-represented litigants are systematically mistreated by legal and judicial authorities.

[77] In his written materials Dr. Chutskoff dwells in particular on 'blog' articles by Jonnette Watson Hamilton and Alice Woolley: (2013) "What has Meads v Meads wrought?", (2013) "Consequences of being an OPCA Litigant"; (2013) "The "Human Excellence" of Judging"), and Julie Macfarlane: (2012) "Avoiding conflation: OPCA's and self represented litigants"; (2013) "The Truth is Raw"; (2013) "The "Scourge" of Self-Representation". The marginal handwritten notes that accompany these items say much as to how Dr. Chutskoff has interpreted these materials and their relationship to himself:

- "Stupidity of professional response to problem they are responsible for creating."
- "SRL's treated with contempt for no reason."
- "Judicial system participants did not accept SRL - good fact."
- "Systemic-Bias Miller J. Slatter J.A."
- "Incivility, intolerable, unfair."
- "Biggest obstruction to access Justice is Judicial misconduct."
- "Slatter J.A. – Foreclosure of fair trial argument -> prima facie grounds of judicial bias."
- "Conflation issues OPCA = SRL Slatter J.A."
- "No! Injustice. Miller J. Slatter J.A. ABUSE of Judicial Power"

These materials and their associated argument are relevant to this litigation to the extent they reveal Dr. Chutskoff's perspective of himself and his litigation history. In relation to Dr. Chutskoff's comments I note, for example, that there is no hint in the record that Dr. Chutskoff has ever been alleged to be or classified as a litigant who advances a category of "Organized Pseudolegal Commercial Argument" ["OPCA"] vexatious litigation strategies surveyed in ***Meads v Meads***, 2012 ABQB 571 (CanLII), 543 AR 215. Nevertheless, Dr. Chutskoff obviously considers himself miscategorised and mistreated in that manner.

[78] Dr. Chutskoff also attaches materials from the Will Action, including Ruskin's claim filings, court documents from the Will Action, and evidence of the alleged forgeries of Ruskin's signature.

[79] In all of this, it is fair to conclude that with the Supplementary Materials Dr. Chutskoff has failed to advance the application actually before this Court. In fact he has now expanded the intended litigation far beyond the scope of the application commenced September 16, 2013, not to mention the original Statement of Claim. Instead his materials, argument, and relief sought are nothing more than an attempt to conduct a court action to challenge the entire litigation history of the Charles Chutskoff estate going back to 2001.

III. Vexatious Litigation

[80] A proceeding that is an abuse of process may be struck on that basis: ***Reece v Edmonton (City)***, 2011 ABCA 238 (CanLII) at para 14, 335 DLR (4th) 600. Litigation that is commonly referred to as "vexatious" may be struck under either *Rule* 3.68(2)(c) or (d), as that term is synonymous with impropriety and abuse of process: ***Wong v Leung***, 2011 ABQB 688 (CanLII) at para 33, 530 AR 82; ***Mcmeekin v Alberta (Attorney General)***, 2012 ABQB 144 (CanLII) at para 11, 537 AR 136.

[81] The court's inherent jurisdiction to prevent abuse by control of court processes provides a parallel jurisdiction to strike out vexatious and abusive litigation: ***Mcmeekin v Alberta (Attorney General)***, 2012 ABQB 144 (CanLII) at para 14, 537 AR 136, citing ***Mazhero v Yukon (Ombudsman)***, 2001 YKSC 520 (CanLII) at para 47; ***Canam Enterprises Inc v Coles*** (2000), 2000 CanLII 8514 (ON CA), 51 OR (3d) 481 (Ont CA) at paras 55-56, affirmed 2002 SCC 63 (CanLII), [2002] 3 SCR 307.

[82] McLachlin J (as she then was) expressly recognized the interrelationship between vexatious and abusive litigation in ***R v Scott***, 1990 CanLII 27 (SCC), [1990] 3 SCR 979 at 1007, 116 NR 361 (cited by the Appeal Court of Appeal in ***Reece v Edmonton (City)***, at para 18):

... abuse of process may be established where: (1) the proceedings are oppressive or vexatious; and, (2) violate the fundamental principles of justice underlying the community's sense of fair play and decency. The concepts of oppressiveness and vexatiousness underline the interest of the accused in a fair trial. ...

[83] The concept of abuse of process is a flexible, functional tool used to control misuse of the courts. At para 16 of ***Reece v Edmonton (City)*** Slatter JA stressed that this is a general purpose remedy with a functional objective, which is to control misuse of the court apparatus:

Abuse of process is a compendious principle that the courts use to control misuses of the judicial system. Abuses of process can arise in many different contexts, and there is no universal test or statement of law that encompasses all of the examples.

[84] In ***Toronto (City) v Canadian Union of Public Employees Local 79***, 2003 SCC 63 (CanLII) at para 37, [2003] 3 SCR 77 the Supreme Court of Canada quoted with approval a definition of abuse of process found in ***Canam Enterprises Inc. v Coles***, (2000), 2000 CanLII 8514 (ON CA), 51 OR (3d) 481 at para 55, 194 DLR (4th) 648 (Ont CA) (in dissent), dissent adopted *en toto*, 2002 SCC 63 (CanLII), [2002] 3 SCR 307:

The doctrine of abuse of process engages the inherent power of the court to prevent the misuse of its procedure, in a way that would be manifestly unfair to a party to the litigation before it or would in some other way bring the administration of justice into disrepute. ...

[85] More recently Associate Chief Justice Rooke in ***Onischuk v Alberta***, 2013 ABQB 89 (CanLII) at para 35, 555 AR 330 concluded litigant conduct was an abuse of process because of a combination of vexatious characteristics, and outrageous and unsupported claims that occurred in an action which had no reasonable prospect for success:

... Onischuk's pleadings essentially complain about those actions of lawyers and judges involved in his prior action, alleging conspiracies against him, tampering with court transcripts and files, misrepresentations, perjury, and acting against the public interest. I have found the proceedings to contain the hallmarks of vexatious litigation. To allow Onischuk to continuously bombard counsel, the judiciary, and this Court with lengthy pleadings, replete with inflammatory accusations, irrelevant legal argument, jurisprudence and legislation, that advance no reasonable cause of action, is manifestly unfair to all parties involved and other participants vying for scarce judicial resources. Consequentially, to allow this action to proceed would surely bring the administration of justice into disrepute.

See also ***Stout v Track***, 2013 ABQB 751 (CanLII).

[86] A vexatious proceeding means "... that the litigant's mental state goes beyond simple animus against the other side, and rises to a situation where the litigant actually is attempting to abuse or misuse the legal process.": ***Jamieson v Denman***, 2004 ABQB 593 (CanLII) at para 127, 365 AR 201.

[87] The vexatious or abusive character of litigation is tested via review of the entire history of the matter. This review potentially includes conduct both inside and outside the court room (***Bishop v Bishop***, 2011 ONCA 211 at para 9, leave denied [2011] SCCA No 239), as the latter may demonstrate whether:

> ... court proceedings commenced by the litigant are not *bona fide* but the product of someone who is unreasonably obsessed with a cause and likely to pursue vexatious court proceedings on an indefinite basis unless stopped. ...

[88] It is immaterial if at first there was an apparently good cause of action: ***Dykun v Odinshaw***, 2000 ABQB 548 (CanLII) at para 42, 267 AR 318, affirmed 2001 ABCA 204 (CanLII), 286 AR 392, leave denied [2001] SCCA No 442; ***Del Bianco v 935074 Alberta Ltd.***, 2007 ABQB 150 (CanLII) at para 39, 156 ACWS (3d) 786.

[89] A litigant's entire court history is relevant (***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII), 543 AR 132; ***Curle v Curle***, 2014 ONSC 1077 (CanLII) at para 24), which may include litigation in other jurisdictions (***Fearn v Canada Customs***, 2014 ABQB 114 (CanLII)).

[90] Since a person is presumed to intend the natural consequences of their acts (***Starr v Houlden***, 1990 CanLII 112 (SCC), [1990] 1 SCR 1366, 68 DLR (4th) 641)) repeated

misconduct is a presumptive indication that a litigant does not intend to follow court rules and procedure (***McMeekin v Alberta (Attorney General)***, at para 119).

A. Indicia of Vexatious Litigation

[91] The preceding review identified the general characteristics of litigation that is vexatious and an abuse of process. Specific indicia of vexatious litigation have also been identified, including:

1. features of vexatious litigation identified in *Judicature Act*, RSA 2000, c J-2, ss 23-23.1; and
2. an often applied set of seven criteria from ***Dykun v Odinshaw***, at para 42, 1267 AR 318.

Those lists are non-exhaustive and simply provide examples of stereotypic features of vexatious litigation: ***Dahlseide v Dahlseide***, 2009 ABCA 375 (CanLII) at para 37, 73 RFL (6th) 57).

[92] This is a useful occasion then to collect and update the catalogue of established stereotypic features of vexatious litigation:

1. collateral attack:
   a) bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction: *Judicature Act*, s 23(2)(a); ***Dykun v Odinshaw*** at para 42;
   b) using previously raised grounds and issues improperly in subsequent proceedings: *Judicature Act*, s 23(2)(c); ***Dykun v Odinshaw*** at para 42;
   c) conducting a proceeding to circumvent the effect of a court order: ***Stout v Track***, at paras 79-82, 84-87;
2. hopeless proceedings:
   a) bringing proceedings that cannot succeed or that have no reasonable expectation to provide relief: *Judicature Act*, s 23(2)(b); ***Dykun v Odinshaw*** at para 42;
   b) seeking forms of relief that cannot be obtained: ***Fearn v Canada Customs***, at para 106; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 196, 203, 543 AR 132; ***Onischuk v Alberta***, at paras 14, 35;
   c) seeking relief that is unwarranted or grossly disproportionate to any plausible remedy: ***Stout v Track***, at paras 68-71; ***Arabi v Alberta***, 2014 ABQB 295 (CanLII), at paras 101-103; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 196, 203, 543 AR 132;
   d) advancing excessive cost claims: ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 196, 203, 543 AR 132; ***Arabi v Alberta*** at paras 101-103;
   e) advancing incomprehensible arguments and allegations: ***R v Fearn***, 2014 ABQB 233 (CanLII) at paras 22-23;
3. escalating proceedings:

a) grounds and issues tend to roll forward into subsequent actions, repeated and supplemented (***Dykun v Odinshaw*** at para 42; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 203, 205, 543 AR 132), this factor is aggravated where this results in simultaneous active overlapping actions (***Wong v Leung***, 2010 ABQB 628 (CanLII) at para 16);

b) with an 'accumulative' nature where, as proceedings continue:

i) new parties are added, frequently these are lawyers: ***Dykun v Odinshaw*** at para 42; ***Big Bear Hills Inc v Bennett Jones Alberta LLP***, 2010 ABQB 764 (CanLII), 507 AR 21; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 203, 205, 543 AR 132; ***Arabi v Alberta***, at para 104; or

ii) unrelated issues and subjects which were not a part of the original action are added to the litigation: this decision, see paras 110-111;

4. bringing proceedings for improper purposes (*Judicature Act*, s 23(2)(c); ***Dykun v Odishaw*** at para 42), including proceedings:

a) without a legal basis and intended disrupt, pre-empt, or frustrate other litigation: ***R v Fearn***, 2014 ABQB 233 (CanLII) at para 48; ***O'Neill v Deacons***, 2007 ABQB 754 (CanLII) at para 25, 83 Alta LR (4th) 152; ***McDonald Estate (Re)***, 2013 ABQB 602 (CanLII) at para 44;

b) with an ulterior motive or to seek a collateral advantage: ***Hughes Estate v Hughes***, 2006 ABQB 159 (CanLII) at para 20, 396 AR 250, varied on other grounds 2007 ABCA 277 (CanLII), 285 DLR (4th) 57;

c) intended to extort a settlement or other benefit: ***Allen v Gray***, 2012 ABQB 66 (CanLII) at para 41, 532 AR 252, appeal dismissed for want of prosecution 2013 ABCA 176 (CanLII), 553 AR 124; ***Arabi v Alberta*** at para 100; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 625 (CanLII) at paras 32, 38, 41, 543 AR 11

c) intended as revenge, harassment, to oppress, or to inflict harm: ***Stout v Track***, at paras 79-82; ***Serdahely Trust (Trustee of) v Serdahely Estate; Haljan v Serdahely Estate***, 2008 ABQB 472 (CanLII), 453 AR 337; ***Wong v Leung; V.W.W. v Leung***, 2011 ABQB 688 (CanLII) at para 36, 530 AR 82; and

d) conducted in retaliation to other persons' successes or their failure to cooperate with the plaintiff, including unwarranted complaints to professional bodies: ***McDonald Estate (Re)***, 2013 ABQB 602 (CanLII) at para 45;

5. initiating "busybody" lawsuits to enforce alleged rights of third parties: ***Wong v Giannacopoulos***, 2011 ABCA 206 (CanLII) at para 4, 510 AR 234, leave refused 2011 ABCA 277 (CanLII), 515 AR 58;

6. failure to honour court-ordered obligations:

a) failing to pay costs: *Judicature Act*, s 23(2)(e): ***Dykun v Odinshaw*** at para 42;

b) a failure to abide by court orders: ***R v Fearn***, 2014 ABQB 233 (CanLII) at paras 45, 49; ***BNP Paribas (Canada) v Pawlus***, 2007 ABCA 325 (CanLII) at para 4, 162 ACWS (3d) 420; ***McDonald Estate (Re)***, 2013 ABQB 602 (CanLII) at para 46;

c) misconduct that is intended to or has the effect of circumventing the operation of court orders: this decision, see paras 121-124.

7. persistently taking unsuccessful appeals from judicial decisions (*Judicature Act*, s 23(2)(f); ***Dykun v Odinshaw***, at para 42), spurious appeals intended to incur cost and cause delay are an aggravating factor (***McMeekin v Alberta (Attorney General)***, 2012 ABQB 625 (CanLII) at paras 38, 41, 543 AR 11);

8. persistently engaging in inappropriate courtroom behaviour: *Judicature Act*, s 23 (2)(g); ***Allen v Gray***, at para 44;

9. unsubstantiated allegations of conspiracy, fraud, and misconduct, including:

a) claims of judge and lawyer deception, fraud, perjury, conspiracy, tampering of records and transcripts, and other conspiratorial misconduct made without the positive evidence (reviewed in ***Fearn v Canada Customs***, at paras 73, 76-78, 85) legally required to support such allegations: ***Onischuk v Alberta***, at para 35; ***Koerner v Capital Health Authority***, 2011 ABQB 462 (CanLII) at para 21, 518 AR 35; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 625 (CanLII) at paras 27-29 38, 543 AR 11;

b) sensational claims of conspiracies and intimidation, harassment and racial bias: ***Allen v Gray***, at para 42; ***V.W.W. v Wasylyshen***, 2013 ABQB 327 (CanLII) at para 59, 563 AR 281, leave refused 2014 ABCA 121 (CanLII); ***Wong v Giannacopoulos***, at para 4;

c) pleadings that are "replete with extreme and unsubstantiated allegations, and often refer to far-flung conspiracies involving large numbers of individuals and institutions", "where the allegations may be unfounded in fact or merely speculative, but the language is vitriolic, offensive and defamatory": ***Del Bianco v 935074 Alberta Ltd.***, at para 35;

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; and

11. advancing Organized Pseudolegal Commercial Argument ["OPCA"] strategies: ***Meads v Meads***; ***R v Fearn***, 2014 ABQB 233 (CanLII) at para 49.

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

B. The RMRF Action is a Vexatious Proceeding

[94] Dr. Chutskoff's RMRF Action has devolved into a textbook example of vexatious litigation. It is irrelevant that this lawsuit may have been initiated for a potentially legitimate purpose and with alleged facts that could support a claim of some kind: ***Dykun v Odinshaw***, at para 42. This progression is particularly obvious when viewed as the latest component in the matrix of court actions which has resulted from Dr. Chutskoff's management of the

Charles Chutskoff estate: ***McMeekin v Alberta (Attorney General)***; ***Fearn v Canada Customs***.

[95] In fact, the RMRF Action is only repeating a pattern that has been previously identified and commented upon by judges in other proceedings. Dr. Chutskoff initiates litigation on one point, but that action rapidly metastasizes into an attack on the result of the Wills Action and other later related litigation. For example, the Saskatchewan Court of Appeal in ***Chutskoff Estate v Ruskin Estate; Ruskin v Chutskoff Estate***, 2011 SKCA 10 (CanLII) at paras 32-33, 366 SaskR 166 concluded that Dr. Chutskoff's trustee-related inquiries were nothing more than pretense for him to access the court and then move to his true objective – an attack on the Will Action. Justice Miller observed the very same process in the Enforcement Action.

1. Collateral Attack

[96] This is the first general basis on which Dr. Chutskoff's litigation is vexatious. His true intent is to challenge all prior unfavourable results in the related Charles Chutskoff estate litigation which has preceded the RMRF Action. As he explicitly states in the Supplementary Materials, he has initiated the RMRF Action for no purpose less than to have this Court set aside the results in other now concluded proceedings. He seeks to attack, by one means or another, the outcomes in multiple Saskatchewan and Alberta decisions.

[97] This is not possible. A Court cannot review or vary the decision of another court except in the proper procedural context, such as an appeal. Any attempt to litigate outside of that context is a "collateral attack". That term was recently explained by Justice Abella in ***British Columbia (Workers' Compensation Board) v Figliola***, 2011 SCC 52 (CanLII), at para 28, [2011] 3 SCR 422:

> The rule against collateral attack similarly attempts to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route … [Emphasis added.]

[98] A collateral attack is a frivolous basis for a lawsuit. An attempt to conduct a collateral attack is vexatious: ***Dykun v Odinshaw*** at para 42.

[99] From almost the outset Dr. Chutskoff has argued the RMRF Action must be expanded to engage in a collateral attack on prior decided judgments:

1. In his May 31, 2013 submissions he attacks the actions of Saskatchewan Queen's Bench Justice McMurtry (para 46, above), and alleges "influence of fraudulent submissions and tampered evidence" (para 47, above).

2. The August 14, 2013 package attacks Justice Slatter's decision in the Enforcement Action as incorrect, and argues this Court must return to re-evaluate his earlier litigation (para 51, above).

3. The same occurs in the August 13, 2013 correspondence, which highlights a "newly discovered issue" (which is never identified) (para 53, above), but Dr. Chutskoff also demands "consolidation" of previous litigation as a mechanism to attack Alberta and Saskatchewan decisions (para 54, above).

4. The August 29, 2013 letter expands and transforms the issue of capacity into a retroactive attack all prior court decisions (para 56, above).

5. Similarly, at the Sept. 16 case management hearing Dr. Chutskoff again insisted his mental state must be considered in light of previous litigation, as those procedures involved fraud. This included the Enforcement Action proceedings. Dr. Chutskoff insists all prior litigation be "consolidated" (para 58, above).

6. In his November 21, 2014 written arguments Dr. Chutskoff indicates it is necessary to re-litigate all previous related actions by their "consolidation" into the RMRF Action (para 61, above). He also attacks prior decisions in the Charles Chutskoff estate litigation via unplead allegations against Ms. Bonora.

7. The entire the Supplementary Materials is a global collateral attack on earlier court proceedings (para 68, 72, above) and the findings of the Law Society of Saskatchewan (para 73, above).

[100] This is not a new phenomenon in litigation in which Dr. Chutskoff is a participant. The Trustee Action as a whole was a collateral attack, though a court response was conducted by the Saskatchewan Court of Appeal in the interest of bringing the Charles Chutskoff estate litigation to a close (para 16, above). That attempt has obviously proven utterly unsuccessful. After that, Dr. Chutskoff persistently attempted to re-argue the Will Action and Trustee Action results during the Enforcement Action (paras 20, 25, above).

[101] Dr. Chutskoff's intentions are beyond doubt: he initiates litigation or applications to attack the result of other legal actions and judicial decisions where he has been unsuccessful, or where he has not sought a timely appeal.

2. Hopeless Proceeding

[102] Much of the relief that Dr. Chutskoff seeks is not available. This vexatious defect (***Fearn v Canada Customs***, at para 106; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 196, 203, 543 AR 132; ***Onischuk v Alberta***, at paras 14, 35) overlaps with the fact the RMRF Action is a prohibited collateral attack. Though Dr. Chutskoff seeks to re-visit and re-litigate old and concluded issues, he cannot do so.

[103] This is not the only kind of relief that Dr. Chutskoff has sought that cannot be obtained. This Court does not have jurisdiction to order persons be the subject of a criminal prosecution by the Attorney General of Canada (paras 73-74, above): ***R v Anderson***, 2014 SCC 41 (CanLII) at paras 37-45. Certain of the damage claims sought in the RMRF Action are excessive and unwarranted (paras 39-40). This is particularly true of the general damage claim for $400,000.00, which approaches the cap on general damages set in ***Andrews v Grand & Toy Alberta Ltd.***, 1978 CanLII 1 (SCC), [1978] 2 SCR 229, 83 DLR (3d) 452) for 'worst case' scenarios such as quadriplegia in a young adult.

[104] Similarly, the $1.5 million damages claim in the RMRF Action Supplementary Materials (para 74, above) is not grounded by any supporting alleged fact. The entire Charles Chutskoff Estate had a value of a little over $1 million, so it is difficult to understand the basis for this claim.

[105] Dr. Chutskoff appears to even seek the court not only appoint a new person to be the personal representative of the Charles Chutskoff estate, but also take on Dr. Chutskoff's legal obligations *and liabilities*: Nov. 21, 2013 written arguments (para 65, above), Supplementary Materials (para 74, above). As I read this request, Dr. Chutskoff seeks to have a court-appointed 'somebody else' take on his fiduciary obligations to the Chutskoff estate and its beneficiaries, which includes himself.

[106] Dr. Chutskoff is seeking review of moot issues, a step that is typically rejected on a policy basis: ***Borowski v Canada (Attorney general)***, 1989 CanLII 123 (SCC), [1989] 1 SCR 342, 57 DLR (4th) 231. Though Dr. Chutskoff argues this is a matter of public interest, there is simply nothing in the RMRF Action that would support litigation which is nothing more than a broad-based collateral attack on court actions that are otherwise complete and concluded.

[107] The named Defendants in this action are all private individuals, and as such are immune to any *Charter*-based claim (paras 73-74) as the *Charter* only restricts the actions of government actors: *Charter*, s 32; ***Schreiber v Canada (Attorney General)***, 1998 CanLII 828 (SCC), [1998] 1 SCR 841 at para 27, 158 DLR (4th) 577; ***R v Dell***, 2005 ABCA 246 (CanLII) at paras 6-9, 367 AR 279.

[108] This collection of 'hopeless' claims is another aspect of why the RMRF Action is vexatious.

3. Escalating Proceedings

[109] This litigation is also an excellent example of every subtype of the "Escalating Proceedings" feature of vexatious litigation. This RMRF Action started as a simple case against Dr. Chutskoff's former lawyers, but now has expanded far beyond that initial scope. Dr. Chutskoff's allegations of misconduct now extend to include many other parties – lawyers, members of the judiciary, and the Law Society of Saskatchewan. Dr. Chutskoff appears to seek relief against many who are third parties to the proceeding: ***Dykun v Odinshaw*** at para 42; ***Big Bear Hills Inc v Bennett Jones Alberta LLP***; ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at paras 203, 205, 543 AR 132; ***Arabi v Alberta***, at para 104.

[110] Not only have the parties involved escalated but so has the subject matter. Dr. Chutskoff argues the RMRF Action should involve additional topics and issues far beyond its initial scope. He seeks "consolidating" other litigation in Saskatchewan and Alberta (paras 58, 61, above). This is not a new pattern of misconduct. Dr. Chutskoff sought to expand the scope of the Enforcement Action appeal (para 33, above). There was no justification for that either then or now.

[111] Dr. Chutskoff has also expanded the scope of specific allegations against the Defendants, alleging "equitable-fraud" perpetrated by Ms. Bonora in 2003 proceedings in Lethbridge, a previously unplead allegation. Further, the factual matrix supporting that allegation seems to be nothing more than the same complaints conclusively decided in the Will Action and Trustee Action (para 62, above).

4. Court Ordered Obligations

[112] Dr. Chutskoff has a history of ignoring court orders. This is best illustrated in Justice Miller's contempt judgment (paras 26-27, above) where he repeatedly defied judicial instructions to disclose and account for his activities.

[113] To date Dr. Chutskoff has not refused to follow a court order in the RMRF Action. That said, he has certainly not met the promises he has made to this court. The crucial outstanding evidence to date in this case management has been psychiatric data from Dr. Warneke. Dr. Chutskoff initially promised documentary evidence of this kind would be made available.

- In the May 31, 2013 submissions Dr. Chutskoff promises to provide "the necessary affidavits" to evaluate his capacity (para 47, above).

- At the June 4, 2013 hearing Dr. Chutskoff expected to have an expert capacity assessment report from Dr. Warneke within the next three months (para 49, above).
- The August 14, 2013 documents promise expert evidence of capacity will be available at a hearing (para 50, above).
- However, in the August 29, 2013 correspondence Dr. Chutskoff denies he ever promised to provide written expert evidence of his mental state and legal capacity where that evidence is limited to the present date.

[114] While this is not a failure to implement a court order I consider this pattern, where Dr. Chutskoff made a promise to the court with a clear timeline but then drifted away from that promise, is a relevant factor that supports classification of the RMRF Action as vexatious litigation.

5. Persistent Unsuccessful Appeals

[115] Dr. Chutskoff has a well-established history of unsuccessful, abandoned, and futile appeals both in Saskatchewan and Alberta, including:

- the unsuccessful Supreme Court of Canada leave application of the Will Action, followed by an incomplete and late reconsideration application (para 7, above);
- the unsuccessful reconsideration application in the Trustee Action (para 17, above); and
- the unsuccessful abandoned appeal of the Enforcement Action (para 28, above).

[116] This is a global factor that favours a conclusion that Dr. Chutskoff engages in vexatious litigation: *Judicature Act*, s 23(2)(f); ***Dykun v Odinshaw***, at para 42.

6. Conspiracy, Fraud, and Misconduct

[117] An often encountered characteristic of vexatious litigation is unsubstantiated allegations of conspiracy, prejudice, persecution, fraud, and misconduct by government and legal actors. Dr. Chutskoff makes many allegations of this kind. He complains he is a "specifically-targeted victim" of wrongdoers who intend to cause "massive pecuniary-losses, a wrongful-conviction and unlawful incarceration by misleading a court and intentional or negligent infliction of mental suffering" (para 63, above). The key theme of the Supplementary Material is that the outcomes to date in the Charles Chutskoff estate litigation are purely a consequence of fraud and conspiracy. These exact claims have already been disposed of by other courts in unappealed judgments.

[118] Dr. Chutskoff increasingly focuses his allegations on judges themselves. Allegations of judicial misconduct and bias were advanced against judges during the Enforcement Action and other matters (paras 20, 33-34, above). Justice Miller concluded this is simply an automatic response by Dr. Chutskoff to any unfavourable result: "[w]hen a judge makes a decision that is not in Dr. Chutskoff's favour, he accuses them of bias."

[119] This pattern continues at present. Dr. Chutskoff in the Supplementary Materials alleges Justices Miller and Slatter were biased, improperly remained seized in that proceeding, breached their judicial obligations, and thereby denied Dr. Chutskoff his fair trial (para 70, above). Justice Slatter conducted an "intentional cover-up" of Justice Miller J's "own-motion fatally-flawed criminal-procedure strategies" (para 74, above).

[120] Similar allegations litter Dr. Chutskoff's RMRF Action materials:

- in his May 31, 2013 submissions he alleges a Saskatchewan Queen's Bench justice was "induced to seal-false-witness testimony", and asks if a criminal proceeding is required (para 46, above);
- the August 22, 2013 materials complains of documents that are "falsely-sworn judicially witnessed" (para 54, above); and
- the Supplementary Materials discuss at length the activities of "malicious adversaries" and judicial misconduct by those who forge documents, engage in fraud, all with the intention to steal from the Charles Chutskoff estate (paras 69-70, above).

[121] These are nothing more than bald allegations or run counter to issues that have been judicially considered and rejected. Dr. Chutskoff's complaints against judges lack an evidentiary basis (***Fearn v Canada Customs***, at paras 73, 76-78, 85) and are therefore vexatious (***Onischuk v Alberta***, at para 35; ***Koerner v Capital Health Authority***, at para 21).

[122] His vexatious allegations involve a wide assortment of parties, including unwarranted complaints against lawyers (para 33, above) and claims the Law Society Saskatchewan has covered-up misconduct by its members (para 34, 68, 74, above): ***Del Bianco v 935074 Alberta Ltd.***, at para 35.

[123] Not only does Dr. Chutskoff argue he is personally a target of malevolent forces, he also claims to be a member of a persecuted community. He says that as a self-represented litigant he is denied equal access to justice (paras 63, 72, above). Dr. Chutskoff says that courts are well known to ignore litigation and arguments of self-represented litigants such as himself (para 64, above). He paints himself as a victim of systematic, entrenched judicial misconduct and persecution (para 71, above).

[124] These unsubstantiated suggestions are not merely vexatious (***Allen v Gray***, at para 42; ***V.W.W. v Wasylyshen***, at para 59; ***Wong v Giannacopoulos***, at para 4) but offensive. Review of the history of the Charles Chutskoff estate litigation demonstrates that Dr. Chutskoff has repeatedly benefited from the care and caution exercised by courts during their interactions with self-represented litigants. He has been granted adjournments. Deadlines have been extended. There can be no better example of this particular discretion than the Saskatchewan Court of Appeal's choice in the Trustee Action to conduct a substantive and careful review of Dr. Chutskoff's fraud-related arguments and evidence in an attempt to resolve this matter and lay Dr. Chutskoff's concerns to rest. Unfortunately, Dr. Chutskoff's response to this unusual step was to simply add another layer to his alleged web of judicial intrigue and bias.

[125] I find no hint that any of the judges involved in this extended litigation have not met their "... special duty to provide limited assistance to unrepresented parties ...": ***Cold Lake First Nations v. Alberta (Minister of Tourism, Parks and Recreation)***, 2012 ABCA 36 (CanLII) at para 24, 522 AR 159, leave denied [2014] SCCA No 62. Rather, the judiciary has consistently responded by measured and careful steps to a wealth of vexatious misconduct, Dr. Chutskoff's ignoring court orders, his contempt of court, abuse of process, and offensive and unwarranted allegations.

[126] Despite the obligations imposed on the bench and bar, a lay person may well still be challenged by court and legal processes. The lay person cannot convert the 'shield' provided by the bench and bar obligations into a sword with which the lay person can attempt to frustrate court institutions and waste judicial and litigant resources, all the while pleading he is a misunderstood, victimized innocent.

7. Improper Purpose

[127] Last, Dr. Chutskoff has engaged in this litigation for an improper purpose. He has attempted to displace the responsibility for his misconduct to a third party. As reviewed above, Dr. Chutskoff has on several occasions asked for a new trustee of the Charles Chutskoff estate who would take over all his legal obligations and liabilities:

- Nov. 21, 2014 written arguments (para 65, above); and
- Supplementary Materials (para 74, above).

[128] Dr. Chutskoff is the author of his own current misfortune. He cannot foist his responsibility onto the shoulders of anyone else. His attempt to do so is an improper vexatious purpose for his much expanded RMRF Action. It also circumvents court orders that flow from the Enforcement Action.

8. Conclusion

[129] At the end of the day the RMRF Action as an example of vexatious litigation. Its initial merits, however unlikely, have on Dr. Chutskoff's own initiative been overtaken by claims which lead to the conclusion that the current proceedings are being brought for an improper purpose, and are thus an abuse of process.

[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 (CanLII) 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,

   (ii) attaching a copy of the appeal, pleading, application or process the appellant proposes to issue or file,

   (iii) deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it,

   (iv) indicating whether Dr. Chutskoff has ever sued some or all of the defendants or respondents previously in any jurisdiction or court, and if so providing full particulars,

   (v) undertaking that, if leave is granted, the authorized appeal, pleading, application or process, the order granting leave to proceed, and the affidavit in support of the order will promptly be served on the defendants or respondents, and

   (vi) undertaking to diligently prosecute the proceeding.

5. The application shall be made in open court before a regularly assigned duty or chambers judge (not in private chambers), and shall be recorded. Leave to commence proceedings may be given on conditions, including the posting of security for costs. An application that is dismissed may not be made again before another judge unless Dr. Chutskoff discloses in writing to the second judge that the application has previously been dismissed.

6. An application to vary or set aside this vexatious litigant order must be made on notice to the Attorney General, and any other person as directed by the Court.

[136] The *Judicature Act* authorizes this Court to make a vexatious litigant declaration on its own motion:

> 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 leave of the Court.

[Emphasis added.]

In Alberta a judge may make a motion to declare a person a vexatious litigant; no application is necessary: ***Dahlseide v Dahlseide***, at para 36; ***R v Fearn***, 2014 ABQB 233 (CanLII) at para 53.

[137] I highlight this provision to emphasize for Dr. Chutskoff how the Alberta legislature has provided this Court has a different legislated authority than courts in Saskatchewan, and that is why, unlike ***Chutskoff Estate v Ruskin Estate; Ruskin v Chutskoff Estate***, 2011 SKCA 10 (CanLII), 366 SaskR 166, it is unnecessary to hold a separate hearing prior to this declaration.

[138] In keeping with the procedure adopted in ***R v Fearn***, 2014 ABQB 233 (CanLII) at para 54, the Minister of Justice and Solicitor General have notice that this Order is stayed for 30 days until July 24, 2014 to allow the Minister of Justice and Solicitor General to make submissions to change or vary this order, per *Judicature Act*, s 23.1(3), should the Minister of Justice and Attorney General wish to do so within that period of time.

IV. Competence

[139] Though it is unnecessary to do so I will briefly comment on the issue of whether Dr. Chutskoff is or is not competent to represent himself in this action.

A. The Legal Test

[140] Dr. Chutskoff argues this Court should adopt the test for legal capacity identified in the UK ***Masterman-Lister v Brutton& Co*** decision. I disagree, and adopt the argument of the Defendants that s 1(d) of the *Adult Guardianship and Trustees Act* provides the test in Alberta.

[141] *Rule* 2.11explicitly indicates that for an adult person the existence or absence of legal capacity is defined in the *Adult Guardianship and Trustees Act*:

2.11 ... the following individuals or estates must have a litigation representative to bring or defend an action or to continue or to participate in an action, or for an action to be brought or to be continued against them: ...

(c) an adult who, in respect of matters relating to a claim in an action, lacks capacity, as defined in the Adult Guardianship and Trusteeship Act, to make decisions;

[Emphasis added.]

[142] That *Adult Guardianship and Trustees Act* definition identifies two key aspects of capacity: the ability to understand (1) a litigation scenario and (2) the foreseeable consequences of an action or inaction:

1 In this Act, ...

> (d) "capacity" means, in respect of the making of a decision about a matter, the ability to understand the information that is relevant to the decision and to appreciate the reasonably foreseeable consequences of
>
> (i) a decision, and
>
> (ii) a failure to make a decision;

[143] I conclude that any common law definition of legal capacity is irrelevant in Alberta. In this jurisdiction the legislature has codified the appropriate legal test.

B. Dr. Chutskoff is Competent

[144] Dr. Chutskoff has provided no expert evidence that he is incompetent to represent himself for any reason.

[145] In any case expert evidence is unnecessary. ***R v Mohan***, 1994 CanLII 80 (SCC), [1994] 2 SCR 9 at para 17, 114 DLR (4th) 419 sets a four-part test for when expert evidence is admissible. The second criterion, "necessity in assisting the trier of fact", is defined by Sopinka J at paras 21-25:

1. "With respect to matters calling for special knowledge, an expert in the field may draw inferences and state his opinion. An expert's function is precisely this: to provide the judge and jury with a ready-made inference which the judge ..., due to the technical nature of the facts, are unable to formulate. "An expert's opinion is admissible to furnish the Court with scientific information which is likely to be outside the experience and knowledge of a judge or jury. If on the proven facts a judge or jury can form their own conclusions without help, then the opinion of the expert is unnecessary""[emphasis added];

2. "[w]hat is required is that the opinion be necessary in the sense that it provide information "which is likely to be outside the experience and knowledge of a judge ..."" [emphasis added];

3. "the evidence must be necessary to enable the trier of fact to appreciate the matters in issue due to their technical nature" [emphasis added]

4. ""[t]he subject-matter of the inquiry must be such that ordinary people are unlikely to form a correct judgment about it, if unassisted by persons with special knowledge"" [emphasis added];

5. "an area that is not understood by the average person."; and

6. "If on the proven facts a judge ... can form their own conclusions without help, then the opinion of an expert is unnecessary." [emphasis added].

[146] There are, without question, instances where an expert witness is appropriate to evaluate legal capacity. This is not one of them. As Moen J observed in ***Malton v Attia***, 2013 ABQB 642 (CanLII) at para 194, 90 Alta LR (5th) 1:

Strict application of the R v Mohan; R v Abbey criteria not only protects the fact-finding role of judge and jury, but makes the courts more accessible. ... [Emphasis added.]

[147] I also agree with the concern expressed in ***MacDonald v Taubner Estate***, 2006 ABQB 138 (CanLII), 22 ETR (3d) 148 by Graesser J on the "proliferation of unnecessary expert witnesses":

> Expert opinion evidence is generally overused. More experts are called at trials than are usually necessary, let alone helpful. Great care must be taken to ensure that the expert is qualified to give the opinion, that the expert is independent, that the expert sticks to his expertise, and that the area of expertise is recognized and not "junk science". The Courts are reluctant to hear expert opinion evidence on the ultimate issue, for fear of their judicial function being usurped by expert witnesses. ...

See also ***Pente Investment Management Ltd. v Schneider Corp.***, [1998] OJ No 6387 (QL), 101 ACWS (3d) 301 (Ont Ct (Gen Div)), affirmed 1998 CanLII 5121 (ON CA), 42 OR (3d) 177, 113 OAC 253 (Ont CA).

[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.

[154] I would usually request party submissions on costs, however I think that step is unnecessary and defeats the objective of bringing an end to this lawsuit and to Dr. Chutskoff's vexatious litigation pattern. The Defendants are entirely successful. On its face column three of Schedule C of the *Rules of Court* entitles the Defendants to taxable fees alone of close to $5,000.00. Keeping in mind that the vexatious lawsuit/litigant issues have been raised by the court on its own motion, in my discretion I set costs payable to the Defendants of $2,500.00 inclusive of disbursements.

Heard on the 16th day of September, 2013, with further written submissions as noted herein, the last received on May 9, 2014.

Dated at the City of Edmonton, Alberta this 24th day of June, 2014.

Peter Michalyshyn
J.C.Q.B.A.

Appearances:

Dr. Brian Chutskoff
for himself

Donald R. Cranston, Q.C.
Bennett Jones LLP
for the Defendants

TAB 5

R. v. Grabowski, 2015 ABCA 391 (CanLII)

Date: 2015-12-11
Docket: 1403-0184-A
Other citation: 609 AR 217
Citation: R. v. Grabowski, 2015 ABCA 391 (CanLII), <http://canlii.ca/t/gmhkw>, retrieved on 2017-07-26

In the Court of Appeal of Alberta

Citation: R. v. Grabowski, 2015 ABCA 391

Date: 20151211
Docket: 1403-0184-A
Registry: Edmonton

Between:

Her Majesty the Queen

Respondent

- and -

Peter Bish Grabowski

Appellant

The Court:

The Honourable Mr. Justice Ronald Berger
The Honourable Mr. Justice Frans Slatter
The Honourable Mr. Justice Thomas W. Wakeling

Memorandum of Judgment

Appeal from the Decision by
The Honourable Associate Chief Justice J.D. Rooke
Dated the 24th day of June, 2014
Filed on the 08th day of August, 2014

Memorandum of Judgment

The Court:

[1] The appellant maintains that the ***Provincial Offences Procedure Act*** does not apply to offences under the ***Traffic Safety Act***. This appeal requires the Court to consider the following issues:

1. Did the chambers judge properly deny the appellant the extraordinary remedy of certiorari on the basis alleged? Put another way, did the Provincial Court at the instance of the prosecution initiated by the police have jurisdiction to deal with the various traffic tickets issued to the appellant in 2010, 2012 and again in 2013.

2. Did the presiding chambers justice properly declare the appellant a vexatious litigant and prohibit him from challenging the jurisdiction of the Provincial Court over the ***Traffic Safety Act*** in any court without the prior written permission of the court.

[2] The thrust of the appellant's submission is that the Provincial Court has no jurisdiction under the ***Traffic Safety Act.*** He says that the Alberta Transportation Safety Board enjoys exclusive jurisdiction on appeal from the Registrar in the light, inter alia of sections 88(2), 91(1), 143(2), 166(1) and sections 24-34 of the ***Traffic Safety Act*** when read in conjunction with section 2 of the ***Provincial Offences Procedure Act***. The appellant also argues that police officers cannot act without the prior authorization of the Registrar.

[3] This is not the first time that the issue has come before Alberta Courts. See ***R. v. Grabowski***, 2011 ABQB 510 (CanLII) and ***R. v. Grabowski***, 2014 ABCA 123 (CanLII), the latter an application for leave to appeal heard before a single judge of this Court. In that case, the appellant argued that the Provincial Court of Alberta was without jurisdiction to try the alleged traffic offences with which he had been charged. He made the same arguments in connection with the proceedings in the court below that give rise to this appeal and reiterates those arguments before us. As already made clear, he maintains that the Alberta Transportation Safety Board has exclusive jurisdiction.

[4] His application for leave to appeal in ***R. v. Grabowski***, 2014 ABCA 123 (CanLII) was denied. In that case the presiding judge set out the argument of the applicant and reached the following conclusions:

"[The appellant] argues, Provincial Court has no power in the matter. But s. 24 gives the functions of that Board. It is to hear reviews and appeals under Divisions 2 and 3 of the *Act*, and to consider any other matter referred to it by the Minister. There is no suggestion that the accused's alleged offences were referred by the Minister to the Board. Division 2 (of that Part 2) is about reviews respecting driver conduct, and Division 3 is about appeals from a list

of license and permit suspensions, seizure of vehicles, administrative penalties, safety inspections, driver examiners, and like topics. The most common example is suspension of drivers' licenses.

Some of those have to do with license suspensions for drinking and driving, but none of the offences in question here allege doing that."

[5] The presiding judge was unable to accept that the acts with which the accused was charged are under the jurisdiction of the Board. He wrote:

"To the contrary. Section 157(1) in Part 8 of the *Act* lists a large number of sections in the *Act*, and makes it an offence to contravene any of them. And s. 157(2) allows a summons or a violation ticket for doing so. And s. 158(1) says that someone guilty of an offence under that *Act* is liable to a fine or other punishment as provided for under the ***Provincial Offences Procedure Act***. And s. 161 speaks of "the court trying the case" where a person is charged with such an offence."

[6] He added:

"Section 2 of the ***Provincial Offences Procedure Act*** says that it applies to every case where someone commits or is suspected of committing an offence under the enactment providing for prison, fine or other penalty."

[7] We endorse those reasons. It follows that the first ground of appeal must be dismissed.

[8] We turn, accordingly, to the impugned declaration. Section 23(2) of the ***Judicature Act*** sets out a non-exhaustive list of circumstances that may warrant a declaration that a litigant is vexatious, they include 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.

[9] The Court enjoys an inherent jurisdiction to control its own process; as such, a judge may declare a litigant vexatious on his or her own motion. See ***R. v. Lymer***, 2014 CarswellAlta 2085, 2014 ABQB 696 (CanLII), at para. 57, ***Chutskoff Estate v. Bonora***, 2014 CarswellAlta 1040, 2014 ABQB 389 (CanLII), at para. 136, ***Dahlseide v. Dahlseide***, 2009 CarswellAlta 1827, 2009 ABCA 375 (CanLII) at para 57.

[10] The appellant maintains that in the court below he was denied the opportunity to defend himself because of the absence of notice of the judge's intention to declare him a vexatious litigant. The record of proceedings makes clear that the appellant was given ample opportunity to deny impropriety and to assert his good faith in pursuing that which he perceived to be legitimate attempts to defend himself. We cannot say that he was taken by surprise.

[11] Put as simply as we can, the appellant will not take no for an answer; the history of the litigation makes that clear. Indeed, notwithstanding his creative invocation of the extraordinary remedies from time to time, the appellant must be made to understand that the position he asserts has been rejected. Re-litigation of the same issue constitutes an abuse of process.

[12] The appeal must be dismissed. We would add only that, in our opinion, there should be an amendment to the declaration that the appellant is a vexatious litigant; the declaration pronounced by the chambers judge is revised to require that all outstanding costs be paid in full before leave of the court is sought for any further litigation and that evidence of such payment be filed with the court where proceedings are contemplated.

[13] We fix costs of the present appeal in the sum $500.00 in favour of the respondent.

[14] Crown counsel shall prepare the terms of this Order, and *Rule* 9.4(2)(c) applies, dispensing with the approval of the appellant.

Appeal heard on December 04, 2015

Memorandum filed at Edmonton, Alberta
this 11th day of December, 2015

Berger J.A.

Authorized to sign for: Slatter J.A.

Authorized to sign for: Wakeling J.A.

Appearances:

Peter Grabowski, In Person
for the Appellant

K.A. Joyce
for the Respondent

TAB 6

644036 Alberta Ltd v Morbank Financial Inc, 2014 ABQB 681 (CanLII)

Date: 2014-11-10
Docket: 1303 16409
Citation: 644036 Alberta Ltd v Morbank Financial Inc, 2014 ABQB 681 (CanLII), <http://canlii.ca/t/gf960>, retrieved on 2017-07-26

Court of Queen's Bench of Alberta

Citation: 644036 Alberta Ltd v Morbank Financial Inc, 2014 ABQB 681

Date: 20141110
Docket: 1303 16409
Registry: Edmonton

Between:

644036 Alberta Ltd.

Respondent / Plaintiff

- and -

Morbank Financial Inc., John Tiberio, Tony Tiberio, Gail Morgan, John Morg an, 1405462 Alberta Ltd., 1364915 Alberta Ltd., and Paragon Capital Corpora tion Ltd.

Applicant

s / Defendants

Memorandum of Decision of the

Honourable Madam Justice B.A. Browne

I. Introduction

[1] On Nov. 19, 2013 644036 Alberta Ltd. ["644" or the "Plaintiff"] issued a Statement of Claim against Morbank Financial Inc. ["Morbank"], John Tiberio, Tony Tiberio, Gail Morgan, John Morgan, 1405462 Alberta Ltd. ["140"], 13664915 Alberta Ltd. ["136"], and Paragon Capital Corporation Ltd. [together: the "Defendants"], alleging that the Defendants had conspired to sell a foreclosed property owned by 644 at an artificially reduced price.

[2] William Grantmyre ["Grantmyre"] at all points has represented 644 in this lawsuit [the "644 Action"]. Grantmyre is the sole director and (indirect) shareholder of 644. He is not a lawyer.

[3] The Defendants deny the alleged conspiracy and fraud, and now apply to have:

1. the Plaintiff's action struck per *Alberta Rules of Court*, Alta Reg 124/2010, *Rule* 3.68 [the "*Rules*", or individually a "*Rule*"], or
2. for the court to order summary judgment against the Plaintiff per *Rule* 7.3, and
3. for a declaration that William Grantmyre is a vexatious litigant per *Judicature Act*, RSA 2000, c J-2, s 23.1 and is restricted from engaging in further litigation directed to any of the Defendants.

[4] In the event I do not terminate the 644 Action, the Defendants also seek a direction that 644 be represented by legal counsel per *Legal Profession Act*, RSA 2000, c L-8, s 106 (1), and a security for cost payment into court by Grantmyre personally (*Rule* 4.22).

II. Preliminary Issue – Related Pleadings

[5] The Defendants seek leave to file pleadings from other related proceedings, per *Rule* 6.11. 644 argues these materials should be excluded; as they are an attempt at delay. I disagree with the Plaintiff, 644, and grant leave to have these materials available for the purpose of this application.

[6] The 644 Action is directly based on the events that occurred during the foreclosure of land owned by 644. That, however, is not the only litigation which is relevant for this application. Many of the same corporations and individuals who were named in the 644 foreclosure are also named in several other actions in Alberta and British Columbia.

[7] These 'related' proceedings are relevant to place the 644 Action in its proper context. I will first review the foreclosure and its relationship to the 644 Action, then summarize relevant events and judicial conclusions in the 'related' actions.

A. The Grande Prairie Land Foreclosure

[8] The fulcrum of this dispute is the foreclosure of property [the "Land"] located in Grande Prairie. The Land was owned by 644. In 2005, 644 mortgaged the Land to Morbank. Morbank foreclosed on the Land in 2007. Grantmyre claims the mortgage was terminated without explanation however the documentary record indicates Morbank offered to renew the financing in a letter dated Jan. 10, 2007. That offer was not accepted.

[9] The foreclosure that followed was a protracted process:

Feb. 2007: the mortgage was not renewed.

May 25, 2007: Master Laycock ordered a judicial sale of the Land for $7,881,418.20. At that point the outstanding debt was $4,558,282.10. The Land was appraised as worth $5,864,957.36.

August 24, 2007: Master Alberstat authorized sale of a portion of the Land for $1,391,846.00 but that transaction did not close.

Sept. 10, 2007: An offer of $6,522,000.00 was accepted but that transaction did not close. The deposit of $200,000.00 was forfeited to Morbank.

April 1, 2008: Morbank applied for foreclosure or possession of the Land, or a reduction in the list price. Master Hanebury ordered the Land relisted for 45 days at the new appraised value: $5,709,000.00.

June 10, 2008: Master Alberstat ordered sale of the Land for $5,131,226.00. This sale also did not close. The $200,000.00 deposit was forfeited to Morbank.

Aug. 18, 2008: Master Prowse ordered sale of the Land via sealed bid.

Sept. 19, 2008: Only one offer was received from 140 for $4,500,000.00. When 644 failed to repay the mortgage debt by Oct. 15, 2008 the land was sold to 140.

[10] This left a debt of $1,035,175.37, and on Jan. 16, 2009 Master Alberstat ordered summary judgment against 644, 1224420 Alberta Ltd., Roger Field, Eric Burton, and Robert Murray, jointly and severally, for that amount.

[11] Importantly, 644 and its co-defendants resisted this application with evidence in two affidavits. Roger Field ["Field"], an architect, deposed he was president, shareholder and director of 644. In general the Field affidavit challenged various calculations on the outstanding debt. However the second affidavit of Robert William Stewart Murray goes further, and alleges that:

1. 140 and Morbank have acted in a manner to prejudice 644 (para 7);
2. 140 has interfered with the foreclosure process (para 8);
3. a conflict of interest exists (para 8); and
4. 140 had failed to provide deposits to Morbank (para 23).

[12] The unsuccessful purchases of August 24, 2007, Sept. 10, 2007, and June 10, 2008 were made by entities controlled or assisted by individuals associated with Grantmyre.

[13] 140 was owned by John Morgan. Morbank loaned $3.3 million of the Land purchase price to 140. The remaining $1.2 million of the purchase prices was loaned to 140 from 1365915 Alberta Ltd. ["136"], a company related to 140. Morbank advanced 136 the $1.2 million via a loan secured against land owned by 136 that had an appraised value of $4.7 million.

[14] 140 subsequently defaulted on its loan to Morbank, and Morbank then took possession of the Land.

[15] The Land foreclosure is the 644 Action and other related proceedings. In a nutshell, the Plaintiff argues the final result was planned. Morbank wanted to obtain the Land at a low price to maximize the potential proceeds of selling the subdivided land for development. It therefore conspired with the other Defendants to meet that objective by terminating the 644 mortgage, and when the land was foreclosed then funded the Morgans' corporations' (140 and 136) bid to purchase of the Land. 644 alleges the 140 purchase was also planned with the intention that it fail. Morbank knew that 140 would in turn default on its loan, permitting direct possession by Morbank.

[16] This scheme allegedly injured the Plaintiff. It left 644 and others who had guaranteed 644 with an outstanding debt that remains to this day. Grantmyre argues a higher sale price was possible, except for interference by the Defendants. That would have cleared 644's debts. Those debts only exist because of the artificially low sale price that was the result of the Defendants' scheme.

[17] The Defendants argue this is incorrect, that all transactions were at arms-length, and persons involved with Grantmyre had many opportunities to purchase the Land but failed to finance those transactions. The allegations of conspiracy are unfounded. Gail Morgan is an uninvolved third party. The foreclosure procedure was transparent, carefully supervised by the Courts, and had a fair result.

B. The Field Bankruptcy

[18] In December 2005 Field guaranteed the 644 mortgage from Morbank. This was one of a number of debts owed or guaranteed by Field. In 2012 Morbank applied to have Field declared bankrupt.

[19] Field resisted the bankruptcy. He was assisted in court by Grantmyre (644 Bench Brief, at p 8). They argued essentially the same conspiracy concerning the 644 Land foreclosure as is advanced in the 644 Action. Allegedly, Morbank's scheme to undervalue the Land drove Field into bankruptcy.

[20] On March 15, 2013 Burrows J issued a judgment ordering Field into bankruptcy: ***Field (Re)***, 2013 ABQB 163 (CanLII), 3 CBR (6th) 142. In that decision Justice Burrows makes the following conclusions:

1. the foreclosure on the Land was judicially monitored and approved (para 8);
2. several accepted though unsuccessful offers were made to purchase the land, including one where Field was involved (para 8);
3. the company that purchased the land (140) was at arms-length to Morbank (para 8);
4. the financial arrangements for the 140 purchase were disclosed to Field and the Court (para 8); and
5. Gail Morgan was entirely uninvolved with the Land, 140, and the foreclosure (para 8).

[21] Justice Burrows concludes at para 9:

Mr. Tiberio characterizes Mr. Field's allegation that Morbank executed a plan to defraud Mr. Field and his associates as absolutely ridiculous. The evidence he presents in his affidavit clearly demonstrates that characterization to be correct.

[22] Justice Burrows declined to order solicitor client costs because (para 21):

... Mr. Field's allegations were so clearly without merit that they cannot have caused the serious sting which in the proper case justifies the order of aggravated costs. In my view a costs award which recognizes the large amount of the unpaid debt, the extra effort that Morbank was required to make to respond to Mr. Field's allegations, and the two adjournments of the application granted to Mr. Field, will be sufficient. ...

[23] Field subsequently appealed but his appeal was struck when he failed to file the appeal record on time. Field then applied to restore his appeal. Grantmyre and a Doris Giesbrecht ["Giesbrecht"] assisted at the hearing (paras 2-4). Watson JA rejected that

application in a decision reported as ***Morbank Financial Inc. v Field***, 2014 ABCA 3 (CanLII), 566 AR 280. Field argued the Land foreclosure purchase was the result of a conspiracy and fraud (paras 11, 15), and that the proceedings before Justice Burrows were unfair (paras 15-16). Field's late filing was the product of an innocent miscalculation: para 19.

[24] Justice Watson concluded the appeal disclosed no reversible error (para 22) and instead that it was a collateral attack against at least one prior decision of the Court of Queen's Bench (para 22).

[25] Field subsequently applied in Masters Chambers to annul the bankruptcy per *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, s 181. He was represented at a March 6, 2014 hearing by Grantmyre. Grantmyre in this proceeding argued that Morbank's material in the Burrows J proceeding was a "bad faith filing" (transcript, p 13), and that Morbank had engaged in a litigation strategy intended to intimidate (transcript, p 14). Master Schlosser rejected that application.

[26] Field then appealed but that appeal was struck on Oct. 9, 2014.

C. Queen's Bench Action 1303-02584

[27] On Feb. 20, 2013 Field sued Morbank and John and Tony Tiberio, alleging (among other things) that he was injured by a conspiracy between those parties and Gail and John Morgan to fraudulently obtain title to the 644 Land. Field seeks reversal of the foreclosure, return of the Land, and $7.5 million in damages, along with unspecified lost profits.

[28] Morbank filed a Statement of Defence on March 13, 2013 which denied those allegations.

[29] There is no indication whether Grantmyre is or is not involved in this litigation.

D. The B.C. Actions

[30] After the Land foreclosure Morbank attempted to collect the remaining outstanding debt from 644 and its guarantors. One debtor was Eric Alan Burton ["Burton"]. Morbank's collection efforts led to a number of interrelated reported British Columbia judgments: ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2013 BCSC 2008 (CanLII); ***Morbank Financial Ltd. v 0476047 B.C. Ltd.***, 2014 BCSC 592 (CanLII); ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2014 BCCA 147 (CanLII), 354 BCAC 101; ***Morbank Financial Inc. v 0476047***, 2014 BCCA 265 (CanLII), 354 BCAC 101; ***First West Credit Union v Giesbrecht***, 2013 BCSC 564 (CanLII), 47 BCLR (5th) 418, reversed 2013 BCCA 531 (CanLII), 348 BCAC 27; ***First West Credit Union v Giesbrecht***, 2014 BCSC 736 (CanLII), 45 RPR (5th) 146; ***First West Credit Union v Giesbrecht***, 2014 BCSC 1446 (CanLII).

[31] This litigation was the result of a series of transactions and corporate arrangements. The parties involved gave sharply different, conflicting versions of what transpired. Justice Saunders in ***Morbank v 04767679 B.C. Ltd.*** (25 February 2014), Vancouver CA041544; CA041400 (BCCA) at para 2 described the litigation as a "factually complicated ... tangled tale" where "[s]omething has gone sadly and, perhaps badly, amiss".

[32] Burton owned a corporation, 0476047 B.C. Ltd. ["047"] that owned four pieces of real property in Fort St. John. After the 644 Land foreclosure Burton ceased acting as director for 047 and other directors were appointed, including Grantmyre. The new directors issued shares that diluted Burton's interest to under one percent of 047. The new directors also transferred the properties owned by 047 to Giesbrecht in exchange for a $2.1 million promissory note.

[33] Giesbrecht then mortgaged the Fort St. John properties for $1.6 million and defaulted on that mortgage. This led to foreclosure proceedings against the former 047 properties, these are the ***First West Credit Union v Giesbrecht*** judgments listed above. Various inconsistent explanations were offered for the fate of the $1.6 million raised via the Giesbrecht mortgage.

[34] Morbank applied to have the 047 properties returned to that corporation and Burton reinstated as the sole shareholder and director. Burton agreed. The other defendants (including Grantmyre, Giesbrecht, and Field) resisted. Funt J in ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2013 BCSC 2008 (CanLII) struck out the other defendants' pleadings and granted Morbank's application.

[35] Justice Funt offers an unflattering evaluation of the resisting defendants and their litigation conduct:

1. they had not been honest with the court: para 16;
2. they had not complied with document production ordered by the court: para 25;
3. Grantmyre's testimony is characterized as "incomplete and contumacious": para 34.

The defendants' repeated and ongoing failure to abide by court orders and the *Rules of Court* was so egregious that Justice Funt conclude the appropriate response was to take the "draconian" step of striking out their defences: paras 63-64.

[36] Funt J subsequently ordered the resisting defendants pay Morbank $263,390.00 in costs: ***Morbank Financial Ltd. v 0476047 B.C. Ltd.***, 2014 BCSC 592 (CanLII). This was a lump sum, an appropriate step where a party has exhibited disdain for court orders and rules: paras 6-7.

[37] Field, Giesbrecht, and Grantmyre appealed to the British Columbia Court of Appeal.

[38] At that court Grantmyre denied a stay of the order to strike by Saunders JA: ***Morbank v 04767679 B.C. Ltd.*** (25 February 2014), Vancouver CA041544; CA041400 (BCCA). Justice Saunders concluded the trial judge had provided ample basis for the admittedly draconian remedy ordered, and further "Mr. Grantmyre has not identified any visible ground of appeal ...": para 25. Justice Saunders concluded that Grantmyre was not honest with the Court. He provided a spurious explanation of 047's ownership structure: para 29. Grantmyre also created the false impression that Morbank's counsel had misinformed another judge: para 30. Saunders JA concludes at para 30: "I simply cannot believe anything Mr. Grantmyre has told me."

[39] Morbank subsequently was granted an order that the appeal would only proceed if Grantmyre, Giesbrecht, and Field posted security for costs of the appeal ($6,500.00) and for the as of yet unpaid trial costs: ***Morbank Financial Inc. v 0476047***, 2014 BCCA 265 (CanLII), 354 BCAC 101. Grantmyre alleged the trial decision was tainted by Morbank misleading the court: para 29. Grantmyre had failed to pay court costs: para 30.

[40] Justice Stromberg-Stein concluded at para 33:

... The appellants have demonstrated a persistent pattern of failing to comply with court orders, whether they be for disclosure or costs. They have provided little to no evidence of their financial circumstances, attempting to rely solely on bald statements. They have demonstrated little credibility in past proceedings. ...

[41] In three separate decisions judges of the British Columbia Court of Appeal concluded that the appeal by Grantmyre, Field and Giesbrecht had "little to no merit" and is "unlikely to succeed": ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2014 BCCA 265 (CanLII) at para 33, 354 BCAC 101, see also ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2014 BCCA 147 (CanLII) at paras 16-17, 354 BCAC 101; ***Morbank v 04767679 B.C. Ltd.*** (25 February 2014), Vancouver CA041544; CA041400 (BCCA) at para 25.

[42] Grantmyre represented himself throughout the ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, proceedings, and in certain of the ***First West Credit Union v Giesbrecht*** appeared on behalf of 047, though it was not a party to the proceedings.

E. The Vahalla Foreclosure

[43] A second property owned by 644 was the subject of a foreclosure action by Morbank: ***Morbank Financial Inc. v Roger Field, 644035 Alberta Ltd., Eric Burton and Robert Murray***: Alberta Court of Queen's Bench docket #0701-03827. Morbank applied to have the property in question sold per an offer for $850,000.00. That application was granted by Master Hanebury on Feb. 22, 2012.

[44] This led to a succession of unsuccessful appeals, first at Queen's Bench (April 20, 2012), then separate appeals to the Alberta Court of Appeal by Field and Grantmyre (on behalf of 644). No steps were taken after the appeal notices were filed and the appeals were ultimately struck on Jan. 9, 2013 (Field) and Sept. 18, 2013 (Grantmyre and 644). Grantmyre in his written brief acknowledges he directed 644 in this proceeding (Bench Brief, at p 8).

IV. *Rules* 3.68 and 7.3

[45] The Defendants seek to have this action terminated via two different but functionally related provisions:

> 3.68(1) If the circumstances warrant and a condition under subrule (2) applies, the Court may order one or more of the following:
>
> (a) that all or any part of a claim or defence be struck out;
>
> (b) that a commencement document or pleading be amended or set aside;
>
> (c) that judgment or an order be entered;
>
> (d) that an action, an application or a proceeding be stayed.
>
> (2) The conditions for the order are one or more of the following:
>
> (a) the Court has no jurisdiction;
>
> (b) a commencement document or pleading discloses no reasonable claim or defence to a claim;
>
> (c) a commencement document or pleading is frivolous, irrelevant or improper;
>
> (d) a commencement document or pleading constitutes an abuse of process;
>
> (e) an irregularity in a commencement document or pleading is so prejudicial to the claim that it is sufficient to defeat the claim.
>
> ...

7.3(1) A party may apply to the Court for summary judgment in respect of all or part of a claim on one or more of the following grounds:

(a) there is no defence to a claim or part of it;

(b) there is no merit to a claim or part of it;

(c) the only real issue is the amount to be awarded.

[46] The legal tests for these two provisions is not in dispute. ***Hunt v Carey Canada Inc.***, 1990 CanLII 90 (SCC), [1990] 2 SCR 959, 74 DLR (4th) 321 indicates an action or defence may be struck under *Rule* 3.68 where it is plain and obvious, or beyond reasonable doubt, that the action cannot succeed. Pleadings should be considered in a broad and liberal manner: ***Tottrup v Lund***, 2000 ABCA 121 (CanLII), at para 8, 186 DLR (4th) 226.

[47] A frivolous plea is one so palpably bad that the Court needs no real argument to be convinced of that fact: ***Haljan v Serdahely Estate***, 2008 ABQB 472 (CanLII) at para 21, 453 AR 337. A pleading is frivolous if its substance indicates bad faith or is factually hopeless: ***Donaldson v Farrell***, 2011 ABQB 11 (CanLII) at para 20.

[48] A court may strike a proceeding that is an abuse of process on that basis: ***Reece v Edmonton (City)***, 2011 ABCA 238 (CanLII) at para 14, 335 DLR (4th) 600. "Vexatious" litigation may be struck under either *Rule* 3.682(c) or (d) as "vexatious" is synonymous with impropriety and abuse of process: ***Wong v Leung***, 2011 ABQB 688 (CanLII) at para 33, 530 AR 82; ***Mcmeekin v Alberta (Attorney General)***, 2012 ABQB 144 (CanLII) at para 11, 537 AR 136.

[49] *Rule* 7.3(1) applies the same legal test as *Alberta Rules of Court*, Alta Reg 390/1968, *Rule* 159(b): ***Manufacturers Life Insurance Co. v Executive Centre at Manulife Place Inc.***, 2011 ABQB 189 (CanLII) at para 11, 48 Alta LR (5th) 178; ***Encana Corp. v ARC Resources Ltd.***, 2011 ABQB 431 (CanLII) at para 7. The necessary threshold is described in ***Canada (Attorney General) v Lameman; Papaschase Indian Band No. 136 (Descendents of) v Canada (Attorney General); Papaschase Indian Band No. 136 v Canada (Attorney General)***, 2008 SCC 14 (CanLII) at para 11, [2008] 1 SCR 372:

… the bar on a motion for summary judgment is high. The defendant who seeks summary dismissal bears the evidentiary burden of showing that there is "no genuine issue of material fact requiring trial" ... The defendant must prove this; it cannot rely on mere allegations or the pleadings ... If the defendant does prove this, the plaintiff must either refute or counter the defendant's evidence, or risk summary dismissal ... Each side must "put its best foot forward" with respect to the existence or non-existence of material issues to be tried ... The chambers judge may make inferences of fact based on the undisputed facts before the court, as long as the inferences are strongly supported by the facts ... [Emphasis added.]

[50] In a summary judgment application evidence may be entered in affidavit form or by other evidence: *Rule*, 7.3(2). Recently the Supreme Court of Canada in ***Hryniak v Mauldin***, 2014 SCC 7 (CanLII), [2014] 1 SCR 87 emphasized an enhanced role for proceedings of this kind as the modern reality of civil litigation places a focus on early resolution of issues in dispute by preliminary procedures rather than at trial. This "shift of culture" is necessary for proportionate, timely and affordable litigation: para 28. In ***Windsor v Canadian Pacific Railway Ltd.***, 2014 ABCA 108 (CanLII) at paras 13-16, 371 DLR (4th) 339, Slatter JA concluded the approach in ***Hryniak v Mauldin*** is equally valid in Alberta.

V Vexatious Litigation

A. The Law

[51] The Defendants argue that the 644 Action is an example of vexatious, abusive litigation. That satisfies the both the specific criteria to terminate litigation via of *Rule* 3.68, and possibly that of *Rule* 7.3(1)(b). The court also has a separate inherent jurisdiction to prevent abuse by control of court processes to strike out vexatious and abusive litigation: ***Mcmeekin v Alberta (Attorney General)***, 2012 ABQB 144 (CanLII) at para 14, 537 AR 136, citing ***Mazhero v Yukon (Ombudsman)***, 2001 YKSC 520 (CanLII) at para 47; ***Canam Enterprises Inc v Coles*** (2000), 2000 CanLII 8514 (ON CA), 51 OR (3d) 481 (Ont CA) at paras 55-56, affirmed 2002 SCC 63 (CanLII), [2002] 3 SCR 307.

[52] The court's authority to control abuse of its processes is a flexible, functional tool. Slatter JA in ***Reece v Edmonton (City)*** at para 16 expressed that principle in this manner:

> Abuse of process is a compendious principle that the courts use to control misuses of the judicial system. Abuses of process can arise in many different contexts, and there is no universal test or statement of law that encompasses all of the examples.

See also ***R v Scott***, 1990 CanLII 27 (SCC), [1990] 3 SCR 979 at 1007, 116 NR 361; ***Onischuk v Alberta***, 2013 ABQB 89 (CanLII) at para 35, 555 AR 330; ***Stout v Track***, 2013 ABQB 751 (CanLII), 95 Alta LR (5th) 32.

[53] A vexatious proceeding is one where "... the litigant's mental state goes beyond simple animus against the other side, and rises to a situation where the litigant actually is attempting to abuse or misuse the legal process.": ***Jamieson v Denman***, 2004 ABQB 593 (CanLII), 2004 ABQB at para 127, 365 AR 201.

[54] A litigant's entire court history is relevant, including litigation in other jurisdictions: ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII), 543 AR 132; ***Curle v Curle***, 2014 ONSC 1077 (CanLII) at para 24; ***Fearn v Canada Customs***, 2014 ABQB 114 (CanLII), 94 Alta LR (5th) 318. That includes conduct both inside and outside the courtroom: ***Bishop v Bishop***, 2011 ONCA 211 at para 9, leave denied [2011] SCCA No 239.

[55] It is irrelevant that litigation may have commenced with what appeared to be a good cause of action: ***Dykun v Odishaw***, 2000 ABQB 548 (CanLII) at para 42, 267 AR 318, affirmed 2001 ABCA 204 (CanLII), 286 AR 392, leave denied [2001] SCCA No 442; ***Del Bianco v 935074 Alberta Ltd.***, 2007 ABQB 150 (CanLII) at para 39, 156 ACWS (3d) 786.

[56] A person is presumed to intend the natural consequences of their acts (***Starr v Houlden***, 1990 CanLII 112 (SCC), [1990] 1 SCR 1366, 68 DLR (4th) 641), so repeated misconduct is a presumptive indication that a litigant does not intend to follow court rules and procedure (***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII) at para 119, 543 AR 132).

[57] Characteristics or indicia of vexatious litigation are identified by legislation (*Judicature Act*, RSA 2000, c J-2, ss 23-23.1) and in the common law. Michalyshyn J in ***Chutskoff v Bonora***, 2014 ABQB 389 (CanLII) at para 92 surveyed these indications of court abuse and identified eleven general categories with many specific examples:

1. collateral attacks,
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 Organized Pseudolegal Commercial Argument ["OPCA"] strategies.

[58] This list is non-exhaustive. *Any* of these indicia are a basis to conclude litigation is vexatious.

B. Vexatious Aspects of the 644 Action

[59] The 644 Action record and the other related litigation provides many examples of vexatious litigation indicia.

1. Collateral Attack

[60] The decision of a court may not be reviewed or varied by another court except in the proper procedural context, such as an appeal. Any attempt to litigate outside of that context is a "collateral attack". That term was recently explained by Justice Abella in ***British Columbia (Workers' Compensation Board) v Figliola***, 2011 SCC 52 (CanLII) at para 28, [2011] 3 SCR 422:

The rule against collateral attack similarly attempts to protect the fairness and integrity of the justice system by preventing duplicative proceedings. It prevents a party from using an institutional detour to attack the validity of an order by seeking a different result from a different forum, rather than through the designated appellate or judicial review route … [Emphasis added.]

[61] In ***Chutskoff v Bonora*** Michalyshyn J at para 92 describes the collateral attack category of vexatious conduct in this manner:

> collateral attack:
>
> a) bringing proceedings to determine an issue that has already been determined by a court of competent jurisdiction ...
>
> b) using previously raised grounds and issues improperly in subsequent proceedings ...
>
> c) conducting a proceeding to circumvent the effect of a court order ...
>
> [Citations omitted.]

[62] The 644 Action is based on a number of key allegations:

1. there was a conspiracy between Morbank, 140, and its principles, and this means the Land purchase by 140 was not by an arms-length third party;
2. the conspiracy was intended to sabotage purchase or retention of the Land by Grantmyre and his associates;
3. the intended effect of the conspiracy was to obtain the Land at an artificially reduced price to maximize the profit obtained by Morbank when it took control of and developed the Land.

[63] Each of these claims has been previously considered and rejected in other court proceedings. The Jan. 16, 2009 summary judgment decision of Master Alberstat was made despite a variation of this allegation in the Murray affidavit. A more mature version of the alleged conspiracy and fraud was explicitly rejected by Justice Burrows in ***Field (Re)***, as "absolutely ridiculous". Justice Watson subsequently in ***Morbank Financial Inc. v Field***, at para 22 concluded that the Field bankruptcy litigation was in effect a collateral attack on at least one Queen's Bench decision.

[64] This alone is grounds to conclude that the 644 Action is a vexatious proceeding. 644 is attempting to re-litigate issues that were already decided. I note that there is a particularly obnoxious aspect to this re-litigation in that 644 has advanced a claim against Gail Morgan after a court has ruled she is an uninvolved, innocent third party: ***Field (Re)***: para 8. These repeated attempts to re-argue an alleged conspiracy resemble the conduct of the vexatious litigant in ***Chustkoff v Bonora*** who returned, again and again, to the same conspiratorial allegations of fraud in multiple proceedings.

[65] A collateral attack is an abuse of process: ***Toronto (City) v C.U.P.E.***, 2003 SCC 63 (CanLII) at para 22, [2003] 3 SCR 77. This conclusion alone meets the criteria to strike this action under *Rule* 3.68(2)(d). 644 cannot prove the alleged wrongdoing and claim against the Defendants as the basis for its allegations has already been rejected.

2. Hopeless Proceeding

[66] ***Chustkoff v Bonora*** at para 92 describes the characteristics of a hopeless and vexatious proceeding:

> hopeless proceedings:
>
> a) bringing proceedings that cannot succeed or that have no reasonable expectation to provide relief ...
>
> b) seeking forms of relief that cannot be obtained ...
>
> c) seeking relief that is unwarranted or grossly disproportionate to any plausible remedy ...
>
> d) advancing excessive cost claims ...
>
> e) advancing incomprehensible arguments and allegations ...
>
> [Citations omitted.]

[67] The 644 Action is a hopeless proceeding because it is a collateral attack. The court may not return to and reconsider conclusions made in other unappealed proceedings. This is also a basis to order summary judgment against the Plaintiff per *Rule* 7.3(1)(a)

3. Failure to Honour Court-Ordered Obligations

[68] Another potential relevant factor is if a litigant has a history of not abiding with court-ordered obligations (***Chutskoff v Bonora***, at para 92):

> failure to honour court-ordered obligations:
>
> a) failing to pay costs ...
>
> b) a failure to abide by court orders ...
>
> c) misconduct that is intended to or has the effect of circumventing the operation of court orders ...
>
> [Citations omitted.]

[69] To date the 644 Action does not include any of these features. Nevertheless, I may look to other litigation to better evaluate whether the 644 Action is or is not vexatious: ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 456 (CanLII); ***Curle v Curle***; ***Fearn v Canada Customs***.

[70] Grantmyre personally has a history of failing to pay court costs: ***Morbank Financial Inc. v 0476047***, 2014 BCCA 265 (CanLII) at para 30, 354 BCAC 101. Justice Funt concluded Grantmyre intentionally refused or evaded his legal and court obligations: ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2013 BCSC 2008 (CanLII) at paras. 25, 63-64. Justice Saunders similarly criticized Grantmyre for his in-court conduct: ***Morbank v 04767679 B.C. Ltd.*** (25 February 2014), Vancouver CA041544; CA041400 (BCCA) at para 30.

[71] Alone these incidents are not a sufficient basis for me to conclude that the 644 Action is vexatious, however I consider Grantmyre's misconduct in other trial and appeal proceedings to be an 'aggravating circumstance' that reinforce my conclusion that the 644 Action is vexatious as it is a hopeless, collateral attack on the conclusions of other unappealed court decisions.

4. Unsubstantiated Allegations of Fraud and Conspiracy

[72] The 644 Action alleges that, despite the close court supervision, the conclusion of the Land foreclosure proceeding is a fraud. This was a scheme designed to purchase the Land for an artificially reduced price with the goal of providing Morbank a kind of double-recovery. It could re-sell the Land for a greater profit, while collecting more of the mortgage deficit from the persons who guaranteed 644's debt.

[73] Allegations of conspiracy, fraud, and misconduct are a basis by which courts have concluded litigation is vexatious, as reviewed in ***Chustkoff v Bonora*** at para 92:

> unsubstantiated allegations of conspiracy, fraud, and misconduct, including:
>
> a) claims of judge and lawyer deception, fraud, perjury, conspiracy, tampering of records and transcripts, and other conspiratorial misconduct made without the positive evidence ... legally required to support such allegations ...
>
> b) sensational claims of conspiracies and intimidation, harassment and racial bias ...
>
> c) pleadings that are "replete with extreme and unsubstantiated allegations, and often refer to far-flung conspiracies involving large numbers of individuals and institutions", "where the allegations may be unfounded in fact or merely speculative, but the language is vitriolic, offensive and defamatory" ...
>
> [Citations omitted.]

[74] Justice Burrows reviewed essentially the same documentary record is before the court in this application and concluded that there is no evidence of collusion to support the alleged conspiracy: ***Field (Re)***, at para 9. I agree. The 644 foreclosure is an arms-length transaction.

[75] Grantmyre's associates had the opportunity to bid on the property and obtain financing to acquire the Land. That they failed to do so does not imply a conspiracy among the Defendants so much as it does that the land was not worth the purchase price, let alone the $14 million appraisal initially advanced. It is not as if Morbank was the only potential source for funds.

[76] The fact that Morbank financed the 140 purchase is irrelevant. The sale of the Land was the result of a sealed bid process where there was only one bid. If the Land had a substantially different value or was attractive to buyers then other bidders would have appeared and purchased the Land instead of 140.

[77] As Justice Burrows observed, these allegations are "absolutely ridiculous" (para 9), and are "clearly without merit" (para 21). That implies that the defence to the Field Bankruptcy, and the Action 1303-02584, and the 644 Action lawsuits were undertaken for some other, improper purpose. This is a further basis to conclude litigation is vexatious: ***Chutskoff v Bonora*** at para 92. I conclude that the baseless allegations of fraud and conspiracy, coupled with the emergence of this factor in three otherwise apparently hopeless actions, indicates that the Field Bankruptcy, Action 1303-02584, and the 644 Action were advanced for an improper purpose. Reviewing the various kinds of improper purposes surveyed in ***Chutskoff v Bonora*** at para 92, it is plausible that Grantmyre and his associates may have had several of these objectives in mind.

[78] In any case, this combination of unsubstantiated conspiracy and fraud, and improper litigation purpose is another separate basis to conclude the 644 Action is vexatious.

5. Persistent, Unsuccessful Appeals

[79] A further and obvious feature of the litigation related to the 644 Action is appeals to almost every step. This is another basis to conclude a proceeding is vexatious (***Chutskoff v Bonora***, at para 92):

> persistently taking unsuccessful appeals from judicial decisions ... spurious appeals intended to incur cost and cause delay are an aggravating factor ... [Citations omitted.]

[80] The Land foreclosure, and related legal proceedings are replete with abandoned or unsuccessful appeals. The Field Bankruptcy decision was challenged in two separate ways. For the purposes of this analysis I consider the application to annul the bankruptcy a kind of appeal. Two proceedings at the Court of Appeal were struck.

[81] 644 under Grantmyre's direction engaged in unsuccessful and abandoned appeals in the Valhalla foreclosure proceeding.

[82] I also conclude that futile procedural applications on appeal fall into this category when they are intended to delay the effect of a trial judgment. Justice Saunders decision to refuse a pre-appeal stay in ***Morbank v 04767679 B.C. Ltd.*** (25 February 2014), Vancouver CA041544; CA041400 (BCCA) is relevant, particularly in light of her conclusion that one reason for that result was that Grantmyre is simply a liar.

[83] All three British Columbia Court of Appeal justices who commented on the strength of the appeal of Justice Funt's decision indicated the case advanced was weak. Justice Saunders at para 25 concluded that there appeared to be no basis at all for the appeal: "Mr. Grantmyre has not identified any visible ground of appeal ...".

[84] Similarly, Justice Watson in ***Morbank Financial Inc. v Field*** at para 22 concluded that the appeal appeared futile. The argument Field advanced was nothing more than a collateral attack, and therefore doomed to fail.

[85] Spurious appeals intended to incur cost and cause delay are an aggravating factor: ***McMeekin v Alberta (Attorney General)***, 2012 ABQB 625 (CanLII) at paras 38, 41, 543 AR 11. Once more, there seems to be no rational, or at least proper, explanation for this aggressive appeal strategy other than Grantmyre and his associates have some illegitimate, inappropriate purpose. While the 644 Action is associated with litigation that indicates an inappropriate, improper, and futile appeal strategy, I do not conclude that this alone is a basis

to conclude the 644 Action is vexatious. That said, the surrounding strategy of improper and futile appeal is another 'aggravating' factor that favours prompt termination of this litigation.

6. Conclusion

[86] I have identified several separate bases to conclude the 644 Action is an example of vexatious litigation: *Rule* 3.68. I have also concluded there are grounds here for summary judgment in favour of the Defendants: *Rule* 7.3. When those are combined, along with the associated litigation history of failure to obey court orders and obligations, and Grantmyre's aggressive appeal strategy, I have no question the 644 Action should and must be terminated immediately.

[87] This is clearly an example of vexatious litigation. The question that remains, however, is whether the person behind this litigation should also be declared a vexatious litigant.

C. Vexatious Litigant Status

[88] The *Judicature Act*, s 23.1 permits a court to restrict the capacity of a person from engaging in or continuing litigation where that person has engaged in vexatious legal proceedings:

> 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 leave of the Court.

[89] Notice was given to the government actors identified in *Judicature Act*, s 23.1(3). Neither opted to participate in the April 29, 2014 hearing.

[90] Grantmyre identifies himself as the sole directing mind and as an owner of 644. He represents 644 in court, personally. I have no difficulty concluding that the 644 Action is, in fact, Grantmyre's personal litigation. He is in control.

[91] I have previously identified three distinct factors that alone potentially warrant my declaring the person behind the 644 Action as a vexatious litigant. These combine with an alarming litigation history.

[92] Grantmyre personally does not follow court orders and rules: ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2013 BCSC 2008 (CanLII) at paras 25, 63-64; ***Morbank Financial Inc. v 0476047***, 2014 BCCA 265 (CanLII) at para 30, 354 BCAC 101.

[93] Courts have concluded Grantmyre is not honest and forthright both as a witness and as a self-represented litigant: ***Morbank Financial Inc. v 0476047 B.C. Ltd.***, 2013 BCSC 2008 (CanLII); ***Morbank v 04767679 B.C. Ltd.*** (25 February 2014), Vancouver CA041544; CA041400 (BCCA) at paras 29-30.

[94] He obviously is not alone in his litigation misconduct. His collaborators Field and Giesbrecht have also been the subjects of court criticism. However, the existence of these collaborators does not diminish Grantmyre's personal responsibility, or the potential need to have his litigation activities restricted to prevent further abuse of court processes. While he arguably is 'one of the pack' in the British Columbia litigation and the Field Bankruptcy, here the 644 Action is his responsibility, alone. And as I have concluded above, that lawsuit was not advanced for a proper, legal purpose.

[95] I therefore declare William Grantmyre a vexatious litigant and order:

1. William Grantmyre 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. William Grantmyre 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 William Grantmyre to be a vexatious litigant,

   (ii) attaching a copy of the appeal, pleading, application or process the appellant proposes to issue or file,

   (iii) deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it,

   (iv) indicating whether William Grantmyre has ever sued some or all of the defendants or respondents previously in any jurisdiction or court, and if so providing full particulars,

   (v) undertaking that, if leave is granted, the authorized appeal, pleading, application or process, the order granting leave to proceed, and the affidavit in support of the order will promptly be served on the defendants or respondents, and

   (vi) undertaking to diligently prosecute the proceeding.

5. The application shall be made in open court before a regularly assigned duty or chambers judge (not in private chambers), and shall be recorded. Leave to commence proceedings may be given on conditions, including the posting of security for costs. An application that is dismissed may not be made again before another judge unless William Grantmyre discloses in writing to the second judge that the application has previously been dismissed.

6. An application to vary or set aside this vexatious litigant order must be made on notice to the Attorney General, and any other person as directed by the Court.

[96] This order is not restricted to the individuals and entities involved, directly or indirectly, with the 644 Action. I have not opted for a more restricted vexatious litigant order because Grantmyre has proven willing and able to insinuate himself into other people's litigation. He represents others and advances inappropriate, futile, and vexatious arguments.

[97] While it is possible that Grantmyre's abusive and vexatious activities may be restricted to the 644 Action Defendants I conclude that the breadth of his litigation activities to date in Alberta and British Columbia warrant this more general response. I note, in particular, that Grantmyre has attempted to appear in the ***First West Credit Union v Giesbrecht*** hearings even though he is not a party. 'Busybody' activities are another characteristic of vexatious litigation: ***Wong v Giannacopoulos***, 2011 ABCA 206 (CanLII) at

para 4, 510 AR 234, leave refused 2011 ABCA 277 (CanLII), 515 AR 58 and in this case indicate a wider net should be cast to constrain this particular vexatious litigant.

[98] This order takes effect immediately.

D. Other Remedies

[99] The Defendants in the alternative sought that Grantmyre personally post security for costs if the 644 Action were continued. Since I have terminated that lawsuit this remedy is unnecessary, but in light of Grantmyre's litigation history I would have made this order as well.

[100] The Defendants also seek an order prohibiting Grantmyre from personally representing 644 in other legal proceedings and argue 644 must be represented by a lawyer. I agree this is appropriate. While the *Legal Profession Act*, s 106(1) prohibits representation in this court by non-lawyers, it is well-established that the inherent jurisdiction of the superior courts provides a discretion to permit representation by non-lawyers: ***R v Crooks***, 2011 ABCA 239 (CanLII) at para 9. One relevant factor is what kind of advocacy or representation is involved (***Professional Sign Crafters (1988) Ltd. v Wedekind*** (1994), 1994 CanLII 9245 (AB QB), 19 Alta. LR (3d) 53 at para. 8 (Alta QB)):

> In order to place the issues in perspective it is important to distinguish between the inherent discretion of a superior Court to permit a non-lawyer to appear physically in Court or before a judge as a representative or advocate of another person (the 'right of audience'), and the right of an individual to represent another person in respect of legal matters generally, that is, the right to practice law.

[101] In ***R v Crook*** Justice Berger stresses at para 10 that the critical question is

> ... whether it can be said that the act done by the non-lawyer is one that should only be performed by members of the legal profession such that the public may be adequately protected from acts of unqualified persons ...

(citing ***Pacer Enterprises Ltd. v Cummings***, 2004 ABCA 28 (CanLII) at para 15, 346 AR 16; ***Balogun v Pandher***, 2009 ABCA 409 (CanLII) at para 18, 469 AR 187).

[102] When framed in that manner there really is no question that Grantmyre is not a suitable litigation representative. His role in this proceeding was that of a lawyer. He advanced and argued legal arguments on behalf of 644. His client's action was vexatious and an abuse of process. Grantmyre has a history of inappropriate in-court and litigation conduct. The public should be protected by refusing to allow Grantmyre to represent 644, a person who is not merely unqualified, but active misuses the courts.

VI. Conclusion

[103] The 644 Action is struck out entirely as vexatious litigation. I order that William Grantmyre is a vexatious litigant, and is restricted from filing or continuing actions in all Alberta Courts.

[104] The Defendants were entirely successful and are therefore entitled to costs. The parties may appear before me if they are unable to agree on the appropriate amount.

Heard on the 29th day of April, 2014.
Dated at the City of Edmonton, Alberta this 10th day of November, 2014.

B.A. Browne
J.C.Q.B.A.

Appearances:

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