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How persistent does a vexatious litigant have to be?

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Cases Considered:
Wong v Giannacopoulos, 2011 ABCA 206

Are the 2007 vexatious litigant provisions in the *Judicature Act*, RSA 2000, c J-2, being overused? Is it too easy to have a person declared a "vexatious litigant and barred from bringing or continuing court actions without leave of a court? I am sure that every person who has had a vexatious litigant order made against them would answer "yes" to both questions, but what might a more detached assessment reveal? These questions demand empirical answers that I cannot give. However, the recent decision of Justice Frans Slatter in *Wong v Giannacopoulos* suggests that vexatious litigant orders are only being granted in rather extreme cases. It seems to take a lot of improper behaviour against a variety of long-suffering defendants before a person is denied unmediated access to a court.

The Alberta government passed new legislation in 2007 with the express purpose of giving the courts in the province more power to deal more efficiently and effectively with "vexatious litigants." These individuals were described by the Honourable Minister of Justice and Attorney General, Ron Stevens, in the Legislative Assembly on second reading of the amendments, in the following terms:

> A vexatious litigant is someone who persistently files proceedings that have already been determined by a court, persistently files proceedings that can't succeed or that have no reasonable expectation of providing relief, persistently files proceedings for improper purposes, inappropriately uses previously raised grounds and issues in subsequent proceedings, persistently fails to pay the costs ordered by a court as a result of unsuccessful proceedings, persistently takes unsuccessful appeals from judicial decisions, or persistently engages in inappropriate courtroom behaviour. . . .(emphasis added)

See also s. 23(2) of the *Judicature Act* for the same non-exhaustive list of what amounts to "instituting vexatious proceedings or conducting a proceeding in a vexatious manner."

There have been at least twenty people declared "vexatious litigants" pursuant to s.23.1 of the *Judicature Act,* the new vexatious litigant preclusion. Before the 2007 amendments, an applicant had to ask for the Attorney General's consent to bring such an application before the Court of Queen's Bench and the Court of Appeal. This procedural barrier undoubtedly deterred at least some weary defendants from making such applications. The 2007 amendments eliminated the need for the Attorney General's consent and they also gave single judges of the Court of Appeal and judges of the Provincial Court jurisdiction to make vexatious litigant orders. According to the Alberta Courts web site, there have been twelve different vexatious litigants named in Court

of Appeal cases since 2007, eight in the Court of Queen's Bench, and two in Provincial Court, but at least one person appears to be the subject of both a Court of Queen's Bench and a Provincial Court order.

In *Wong v Giannacopoulos*, the unfortunate defendants were lawyers and insurance company employees, people who are better situated than most to defend themselves and people who should be less intimidated than most by being sued. The *Wong v Giannacopoulos* lawsuit had its roots in a motor vehicle accident that occurred in 2001, as a result of which Yui Wah Leung sued the defendant driver, Ian Darrell Awid, in 2003. Awid's insurer was the Dominion of Canada General Insurance Company and the adjuster who investigated the claim was Chris Dundas. Dominion of Canada General Insurance Company retained McLennan Ross LLP to defend the action and the members of the firm who acted on the file were two lawyers, Vicki Giannacopoulos and Christina Tchir, and Ms. Giannacopoulos' assistant, Rebecca Cormack. That action was dismissed in 2006 as a result of the failure of Yui Wah Leung to post security for costs.

In 2008, the self-styled "V.W. Wong" sued all of the people involved in Yui Wah Leung's action: Ian Darrell Awid, the Dominion of Canada General Insurance Company, Chris Dundas, McLennan Ross LLP, Vicki Giannacopoulos, Christina Tchir, and Rebecca Cormack. In her action, she alleged she was treated unfairly in the 2003 action by Yui Wah Leung, and that some of the orders made were not correct and were made by corrupt judicial officers. Not surprisingly, her action was dismissed by Court of Queen's Bench Justice Ouellette under Rule 3.68 of the Alberta Rules of Court, Alta. Reg. 124/2010 as the abuse of process that it was.

V.W. Wong wanted to appeal the dismissal, of course The defendants applied for security for costs on the appeal. In *Wong v Giannacopoulos*, 2011 ABCA 156, Justice Jack Watson granted them security for costs, staying V.W. Wong's action until costs were posted. V.W. Wong sought his leave to appeal his security for costs order to a panel of the Court of Appeal. Understandably, in *Wong v Giannacopoulos*, 2011 ABCA 207, Justice Watson refused to give her that permission. Leave to appeal is not granted under Rule 505(6) unless the issues engage a serious question of general importance or a possible error of law or an unreasonably exercised discretion or a misapprehension of important facts. V. W. Wong alleged injustice — another injustice in a long line of injustices ostensibly perpetuated on her by the courts. In some of her more intemperate remarks, V.W. Wong characterized herself as the victim of racial, ethnic or cultural bias at the hands of a "German Mennonite . . . white man" and judges with French-Canadian names. Justice Watson dealt with some of what he charitably characterized as her "multi-topic and wide-ranging submissions" (at para 7, 2011 ABCA 207) and concluded she failed to meet any element of the test.

In an added twist, V.W. Wong had named Monica Leung and Amelia Leung, Guardian and Trustee for Yui Wah Leung as co-plaintiffs. Apparently V.W. Wong is the common-law spouse of Yui Wah Leung, who is a dependant adult. Monica Leung died in 2009; she was the sister of V.W. Wong. Amelia Leung is the daughter of Monica Leung and Yui Wah Leung and the court-appointed Trustee and Guardian of Yui Wah Leung. V.W. Wong did not have permission or authority to name Monica Leung or Amelia Lueng as plaintiffs. Amelia Leung therefore had to appear before Justice Jack Watson when the defendants applied for security for costs, saying she and her father had been dragged into V.W. Wong's 2008 lawsuit without their permission and without proper notice. They were in danger of having costs orders made against them. In June 2011, Justice Watson signed a Consent Order removing Monica Leung and Amelia Leung as parties to the action.

Perhaps their decisive win on the abuse of process and security of costs matters emboldened the defendants. In any event, the defendants — law firm, lawyers, legal assistant, insured, insurance company and adjuster — applied to Justice Slatter as a single judge of the Court of Appeal to have V.W. Wong declared a "vexatious litigant."

Justice Slatter noted (at para 8) some of the criteria for determining whether a person is a vexatious litigant that are set out in the *Judicature Act*, all of which appeared to have been met just by this one action:

> a. the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;
> b. where it is obvious that the action cannot succeed, or if the action would lead to no meaningful remedy, or if no reasonable person can reasonably expect to obtain relief;
> c. grounds and issues raised in one proceeding are rolled forward into subsequent actions and repeated or supplemented;
> d. failure to pay costs of unsuccessful proceedings;
> e. persistently taking unsuccessful appeals from judicial decisions.

Bringing an action on behalf of others without their permission, asserting rights based on the 2003 action to which she was not a party, and complaining about the treatment of Yui Wah Leung, who had Amelia Leung as a court-appointed Guardian and Trustee to look after his interests, all fell within the *Judicature Act's* criteria. The failure to pay costs and the taking of unsuccessful appeals was evident in the matters heard by Justices Ouellette and Watson.

But what of persistence? In subsection 23(2) of the *Judicature Act* and the quote from the Honourable Minister of Justice and Attorney General that begins this post, a persistent pattern of behaviour was said to be the target of the vexatious litigant amendments. Justice Slatter notes (at para 10) seven other lawsuits in which V.W. Wong had behaved as a vexatious litigant abusing the processes of the court, including:

- Commencing actions which are subsequently struck because she failed to appear for examinations for discovery: *Wong v Williams*, [1994] AJ no426 (CA), leave to appeal refused [1994] 3 SCR xi.
- Applying for interlocutory relief for which there is no basis in law: *Wong v Sun Life Assurance Co. of Canada*, [1995] AJ No. 1629.
- Delaying prosecution of an action for eleven years until what "will otherwise be a lifelong career lawsuit by the Plaintiff" was finally dismissed: *V.W.W. v Baxter (c.o.b. All Well Walk In Clinic)*, 2000 ABQB 816.
- Commencing numerous unsuccessful actions against many people over the years, and habitually failing to pay the resulting costs: *Wong v Booker*, [2004] AJ No. 1118 at para 15.
- Launching unmeritorious appeals and failing to comply with rules of court: *Leung v Wasylyshen*, 2008 ABCA 430; *Leung v Wasylyshen*, 2009 ABCA 13.
- Commencing "busybody" lawsuits, in fatally flawed format, in which she attempts to enforce the rights of third parties, and sues counsel who are representing various parties in the litigation, then resisting the payment of costs and enforcement of the judgment for improper reasons: *Wong v Chambers*, 2009 ABQB 57; *Wong v Chambers*, 2009 ABQB 133, 67 CPC (6th) 54 at paras 23, 26.

- Launching an appeal that is struck for want of prosecution, and then seeking leave to appeal the order that struck the appeal: *Leung v Edmonton (City)*, 2009 ABCA 149.

This long list makes it evident that V.W. Wong had persistently abused the processes of the courts for improper purposes over a long period of time. As a result, V.W. Wong, also known as Victoria Wong, was declared to be a vexatious litigant by Justice Slatter. He made the only type of order allowed by subsection 23.1(1) of the *Judicature Act*, namely, an order preventing her from instituting new proceedings or continuing proceedings already instituted, whether on her own behalf or on behalf of any other person, without leave of the Court in which the proceeding is initiated or continued. He also prohibited her from describing herself with her initials or a pseudonym, insisting that she use her own name. He added that any application she made to be allowed access to a court had to be heard before a regularly assigned duty or chambers judge (i.e., in open, public court) and had to be recorded.

Vexatious litigants have been the subject of law reform studies. For example, the Parliament of Victoria, Law Reform Committee, conducted an "Inquiry into Vexatious Litigants" in 2008. In Canada, the Law Reform Commission of Nova Scotia issued a comprehensive "Vexatious Litigants" Discussion Paper in 2005 and a Final Report in 2006. Why are vexatious litigants seen as a serious civil justice problem? To quote from the Law Reform Commission of Nova Scotia's News Release, "Vexatious litigants can waste the time of judges and administrative staff and prevent other, legitimate claims from being dealt with. Vexatious litigants can also force other people to incur otherwise unnecessary legal bills, by having to defend themselves against meritless claims."

There is also some interesting psychiatric literature discussing vexatious litigants and what motivates them. See, for example, I. Freckelton, "Vexatious litigant law reform" (2009) 16(5) Journal of Law & Medicine 721-27; P. E. Mullen and G. Lester, "Vexatious litigants and unusually persistent complainants and petitioners: from querulous paranoia to querulous behaviour" (2006) 24 Behavioral Sciences & the Law 333-49; and MW Rowlands, "Psychiatric and legal aspects of persistent litigation" (1988) 153 The British Journal of Psychiatry 317-23.

From a personal perspective, Justice Slatter's order makes the difference between my writing or not writing a post about a court decision that went against V.W. Wong. I would not write about Justice Watson's security for costs decisions, for example, because I would not want the aggravation of being sued by V.W. Wong for saying Justice Watson's characterizations of her submissions was "charitable" or the defendants' win was "decisive", as I have in this post. While I could easily defend myself against V.W. Wong, I have better things to do with my time. With Justice Slatter's order, I now know the chances of V.W. Wong suing me are considerably lessened. Not only is there no reason to sue me, but now she needs a judge's permission to do so.

To return to the questions I asked at the beginning of this post, perhaps Justice Slatter's decision suggests that the new vexatious litigants provisions are being under-used. Perhaps those who have the qualifications and resources to more easily defend themselves should act more quickly when sued by someone who persistently file proceedings that have already been determined by a court and/or persistently file proceedings that cannot succeed and/or persistently file proceedings for improper purpose and/or persistently fails to pay court-ordered costs and/or persistently take unsuccessful appeals and/or persistently engage in inappropriate courtroom behaviour.

I am not advocating that those with power bully those without, or that someone with a cause of action be denied access to the courts. But look at the long list of people that V.W. Wong brought to court for improper purposes. Not all of them could have found it easy to defend themselves.