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## Enforcing and Extending Vexatious Litigant Orders

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Case commented on: *1158997 Alberta Inc v Maple Trust Company*, [2013 ABQB 483](#)

This decision is interesting for two reasons. First, it illustrates a problem with the vexatious litigant provisions in Part 2.1 of the *Judicature Act*, [RSA 2000, c J-2](#) or their administration namely, the absence of a list of those declared to be vexatious litigants that is easily and widely available both to those within and those outside the legal profession. As it stands now, it appears that even the clerks of the court do not have a list of who these orders have been made against, even though those orders state that the persons named vexatious litigants cannot commence or continue actions in the specified court without leave of that court. In this case, a company with two such orders made against it (in 2010 and 2011) was able to begin proceedings in 2012 and 2013 without the required leave of the court. Second, it illustrates the application of the seldom used subsection 23.1(4) of the *Judicature Act*. That subsection allows the court to make an order declaring someone who is not a party to an action to be a vexatious litigant as long as they are someone who, in the opinion of the court, is associated with the person against whom a vexatious litigant order is made. In this decision, five corporate plaintiffs in three different actions were declared to be vexatious litigants, and six individuals, who were not parties to any of the three actions but who were found to be associated with the corporate parties, were also declared to be vexatious litigants. One such individual was twice removed from the parties declared to be vexatious litigants. (The decision might also be noteworthy for a third reason: the number of persons — eleven — declared to be vexatious litigants by one order.)

### Summary of the decision

Justice Sal LoVecchio's decision in *1158997 Alberta Inc v Maple Trust Company*, 2013 ABQB 483 arose as a result of applications by three financial institutions — Maple Trust Company, Alberta Treasury Branches and the Royal Bank of Canada — for summary judgment and other relief in three cases that had been consolidated for the purpose of a Special Chambers Application. As Justice LoVecchio notes (para 49), there are striking similarities among the three actions that were before him. In each case 1158997 Alberta Inc purchased and obtained title to a residential property that was either being foreclosed on or about to be foreclosed on. 1158997 Alberta Inc would then resell the residential property to a different numbered company. The numbered company that was the new owner then granted a mortgage to an entity called Partners in Success Mortgage Inc and that mortgage was registered against title, behind the legitimate first mortgages that were being foreclosed upon. The first mortgagees — Maple Trust, Alberta Treasury Branches and the Royal Bank in these three cases — never received any money from 1158997 Alberta Inc, the numbered company the properties were sold to, or Partners in Success Mortgage Inc. As a result, foreclosure proceedings were begun or continued and an Order for Sale was eventually granted.

It appears that the original owners stayed in their homes through all of this buying and selling and that they paid rent to 1158997 Alberta Inc (or the numbered company that became the subsequent owner or Partners in Success Mortgage Inc). The rental income would come in but no mortgage payments would be made. According to K.R. Laycock, Master in Chambers in *Scotia Mortgage Corporation v Gutierrez*, [2012 ABQB 683](#) (CanLII) at para 23-26 — another case involving 1158997 Alberta Inc and very similar facts — this is a revival of a 1970s scam known as “Dollar Dealing”. Essentially, the rental income from numerous desperate homeowners gives the Dollar Dealers substantial cash flow. The longer the Dollar Dealers can hold off foreclosure, the more money they make, and so they tend to make a lot of court appearances and spurious arguments.

But Dollar Dealing is not the entire story. After the Order for Sales were granted in each of the three actions, 1158997 Alberta Inc, Partners in Success Mortgage Inc and the numbered companies who bought from 1158997 Alberta Inc sued the foreclosing bank, the lawyers for the foreclosing bank, the Master of the Court of Queen’s Bench who granted the Order for Sale and the Court itself. The original owners who had sold their homes to 1158997 Alberta Inc were either not involved in these actions or obtained orders removing them as plaintiffs. These lawsuits alleged similar things: the financial institutions ignored the sales and attempts by the new owners to pay out the mortgages. The claims against the Master and Court were, of course, struck rather quickly on the basis of the long-standing doctrine of judicial immunity. All of those orders were appealed but all three appeals were struck. The three applications that Justice LoVecchio heard were brought by the remaining defendants, the foreclosing banks and their lawyers.

Justice LoVecchio granted all three summary judgment applications under Rule 7.3 of the *Rules of Court*, applying the test in *Condominium Corp No 0321365 v 970365 Alberta Ltd*, [2012 ABCA 26](#) to determine that there was no merit to any of the claims by 1158997 Alberta Inc, Partners in Success Mortgage Inc and the other numbered companies. If necessary, he would have struck those claims under Rule 3.68 on the basis it was “plain and obvious or beyond reasonable doubt that the claim cannot succeed” (at para 95, quoting *MacKay v Farm Business Consultants Inc*, [2006 ABCA 316](#) at para 7).

The requisite notice having been provided to the Minister of Justice and Attorney General in March 2013 (now the Minister of Justice and Solicitor General of Alberta), Justice LoVecchio also granted the financial institutions’ application to declare 1158997 Alberta Inc, Partners in Success Mortgage Inc and Derek Ryan Johnson, the sole director and voting shareholder of 1158997 Alberta Inc, to be vexatious litigants. Justice LoVecchio declared (at para 103) that the three were prevented from “commencing or attempting to commence, or from continuing, any appeal, action, application, or proceeding in the Court of Appeal, Court of Queen’s Bench or the Provincial Court of Alberta (Civil) on their own behalf or on behalf of any other entity or estate without an Order of the appropriate court ...”. He relied upon *Onischuk v Alberta*, [2013 ABQB 89](#), affirmed [2013 ABCA 129](#) for the indicia of vexatious litigation and found (at para 71) the indicia to be “a textbook précis of the three actions.” He also relied on the fact that 1158997 Alberta Inc and Derek Johnson’s related companies had begun these actions in contravention of previous court orders declaring them to be vexatious litigants (at para 102). Justice LoVecchio also granted the application to declare as vexatious litigants the three other numbered companies which had been plaintiffs in the actions and which were controlled by Johnson: 1673793 Alberta Ltd, 1691482 Alberta Inc, and 1660112 Alberta Ltd.

Five individuals who had not instituted or conducted any of the proceedings, and who therefore could not be declared to be vexatious litigants under subsection 23.1(1) of the *Judicature Act*, were found to have been “associated with a person against whom an order under subsection (1) is made” and therefore declared to be vexatious litigants under subsection 23.1(4). Justice LoVecchio declared three of those individuals to be vexatious litigants because they were directors of the three numbered companies which were plaintiffs and which “purchased” the homes from 1158997 Alberta Inc and therefore they associated with parties to the action declared to be vexatious litigants: Sarabjit Singh Sarin , the sole director and voting shareholder of 1673793 Alberta Ltd; Jason Mizzoni, who filed the Notice of Appeal of the order removing Master Laycock and the Court of Queen’s Bench of Alberta as defendants in one of the three actions on behalf of 1691482 Alberta Inc; and Ajay K. Aneja, the sole director and shareholder of 1660112 Alberta Ltd. “Ty Griffiths”, identified in each action as an agent for all of the corporate plaintiffs was declared to be a vexatious litigant if he actually exists (at paras 105-106). As Ty Griffiths was not present at the hearings, it was not clear that Ty Griffiths is a real person as opposed to, say, a pseudonym for Derek Johnson. However, as the person the corporate plaintiffs named as their agent, he was associated with entities named as vexatious litigants under subsection 23.1(1). Finally, Evanna Ellis, who appeared on the first day of the hearing of the Special Chambers Application and said she was the agent for Ty Griffiths, was also declared to be a vexatious litigant. Justice LoVecchio stated (at para 108) that she was “by extension” an individual associated with a person against whom an order under subsection (1) is made.

### **Comments on the decision**

1) The need for a list of those declared to be vexatious litigants that is widely available

Do the Alberta courts maintain a list of persons declared to be vexatious litigants? If so, who is it distributed to? It is certainly not made publicly or widely available. And it does not appear to be available within the courts themselves, or to the clerks. 1158997 Alberta Inc sued banks, bank lawyers, Masters of the Court of Queen’s Bench and the Court itself, despite the fact the company has been the subject of at least two vexatious litigant orders by Court of Queen’s Bench judges that prohibited it from commencing a court action without leave of the court.

Members of the public or legal profession would have difficulty even finding out that 1158997 Alberta Inc had at least twice been declared to be a vexatious litigant even if they searched databases of the courts’ judgments. It appears that the previous orders were not posted on the Court’s web site, are not in CanLII and are not in any commercial database. We only know about them because Master Laycock in *Scotia Mortgage Corporation v Gutierrez*, [2012 ABQB 683](#) noted that 1158997 Alberta Inc had been declared a vexatious litigant in at least two other cases because of arguments made by Derek Johnson when he appeared in court on behalf of the company. Master Laycock stated that the two cases were *Exceed Mortgage Corporation and Exceed Funding Corp v 1158997 Ltd.*, Action No. 1001-08610 (December 3, 2010) per Justice Wilson, and in *HSBC Finance Mortgages Inc. v Strand* Action No. 1001-14143 (February 9, 2011) per Justice Strekaf. Justice LoVecchio repeats this information in *1158997 Alberta Inc v Maple Trust Company* (at para 57).

In the United Kingdom, the Ministry of Justice maintains a list of vexatious litigants, who in that country are people who have been forbidden by a High Court Judge to issue civil proceedings in any court in England and Wales without permission. Vexatious litigants are named, and the date of their being declared a vexatious litigant is specified, in a list available [here](#) that non-lawyers as well as the legal profession can access. The Scottish Courts [website](#) has a short and rather sparse

“[L]ist of members of the public who have habitually and persistently instituted vexatious legal proceedings without reasonable ground and have been declared vexatious litigants under the Vexatious Actions (Scotland) Act 1898.” Because it includes only first and last names and some of those names appear to be rather common ones (e.g., James Bell), it is not clear how helpful such a list is to the legal profession, courts, and members of the public (especially those named James Bell).

In the United States, far more information is disclosed about vexatious litigants in those states that do publish lists. For example, California’s statewide vexatious litigant list is updated monthly and may be found on the California Courts Web site [here](#). It includes middle names or initials if known, the court making the order, the case number and date. The Nevada courts implemented a similar [Vexatious Litigants List](#) in 2009. Texas court administrators make a list of [Vexatious Litigants](#) available on their web site as well, based on reports received from both Texas and federal courts. Their list is also much more than just names. It includes a helpful link to a copy of the order declaring the person to be subject to what they call a “pre-filing order.” The list — a rather lengthy one — is even available as a sortable Excel spreadsheet.

Vexatious litigant orders should be enforced by the courts that make them without another innocent party being forced to bring an application and incur the cost of enforcing the order. At the very least, the clerks of the various courts should have such lists available to them. But making the lists widely available to members of the public and the legal profession might help those facing persistent and unfounded claims by these vexatious litigants in other forums.

2) Vexatious litigant orders against those who do not themselves institute or conduct vexatious court proceedings.

Based on recent reported cases, subsection 23.1(4) of the *Judicature Act* has not been used very often. It allows the court, on application or on its own motion, and with notice to the Minister of Justice and Solicitor General, to make an order declaring someone who is not a party to an action to be a vexatious litigant as long as they are someone who, in the opinion of the court, is associated with the person against whom a vexatious litigant order under subsection 23.1(1) is made. In other words, it catches those who are merely “associated with” persons who institute or conduct vexatious proceedings. What does “associated with” mean?

The application of subsection 23.1(4) to Derek Johnson, the sole director and voting shareholder of 1158997 Alberta Inc and the person who appeared in court on the Special Chambers Application and made arguments as the director of Partners in Success Mortgage Inc, appears uncontroversial. If anyone is “associated with” a party declared a vexatious litigant, Derek Johnson is, as a result of his multiple relationships and multiple court appearances to represent those parties. Perhaps Derek Johnson even satisfies subsection 23.1(1) as a person “conducting a proceeding in a vexatious manner” when he appears for the corporate parties, although as their agent, it might be better to see the corporate parties as the ones conducting the vexatious proceedings.

At the other extreme, however, is Evanna Ellis, who appeared on the first day of the hearing of the Special Chambers Application and said she was the agent for Ty Griffiths. Ty Griffiths was also declared to be a vexatious litigant, if he exists, but under subsection 23.1(4), and not 23.1(1). Ty Griffiths did not institute or conduct vexatious proceedings; he did not show up for any of the hearings and was merely named in the corporate parties’ documents as their agent. Perhaps Ty Griffiths is Derek Johnson, but the order against Ty Griffiths was not made on that basis. (“Ty

Griffiths” bills himself as a “human rights activist” and appears to operate the website [www.privatesectoract.com/](http://www.privatesectoract.com/). While Derek Johnson recirculates the 1970s Dollar Dealer scheme on freelistcalgary.com, “Ty Griffiths” uses his website to encourage homeowners to babble discredited nonsense about “dual/split person” and other OPCA concepts (see “[The Organized Pseudolegal Commercial Argument \(OPCA\) Litigant Case](#)”).

Evanna Ellis is thus twice removed from a party who instigated or conducted vexatious proceedings. She is the agent for an agent of such a party. Justice LoVecchio perhaps acknowledged that he was stretching the scope of subsection 23.1(4) when he stated (at para 108) that she was “by extension” an individual associated with a person who instigated or conducted vexatious proceedings. While subsection 23.1(1) is necessary in order to be able to catch people like Derek Johnson who appear to incorporate numerous companies to instigate vexatious proceedings, it is not clear it can or should extend to someone as distanced from the instigators as Evanna Ellis appears to have been.

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