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Alberta's New Vexatious Litigant Law Applied

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Cases Considered:

O'Neill v. Deacons, 2007 ABQB 754

The Alberta government passed new legislation in June of 2007 to give courts in the province more power to deal more 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. . . .
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> Some common characteristics often apply to vexatious litigants. They may include opinionated and narcissistic behaviour and asking the same questions repeatedly. For some vexatious litigants losing a case may fuel feelings of injustice and lead to ongoing legal action, and some exhibit behaviour that is consistent with some types of mental illness.

The procedures to deal with vexatious litigants were simplified by Bill 18, the Judicature Amendment Act, 2007. Before these amendments, an applicant had to ask for the Attorney General's consent to bring a vexatious litigant application before the Court of Queen's Bench and the Court of Appeal. The amendments eliminated the need for the Attorney General's consent, substituting notice of such applications instead. They also gave the Provincial Court jurisdiction to make vexatious litigant orders. The Alberta amendments were produced after a review of the April 2006 Final Report on Vexatious Litigants by the Law Reform Commission of Nova Scotia.

O'Neill v. Deacons is a vexatious litigant case decided by Court of Queen's Bench Associate Chief Justice Neil Wittmann under these 2007 amendments. The Defendants applied for an order prohibiting the female Plaintiff, Patricia Moore-O'Neill, from commencing further proceedings or continuing proceedings already commenced without leave of the Court, pursuant to s.23.1 of the Judicature Act, the new vexatious litigant preclusion.

The events leading up to this application began in May 2007, with a dispute over a dog given or sold by the Plaintiffs, James E. O'Neill and Patricia Moore-O'Neill, to one of the Defendants and then taken back by the Plaintiffs under circumstances that were in dispute. Actions were commenced in both Provincial Court and the Court of Queen's Bench, criminal charges were filed, and restraining orders were issued. There was nothing remarkable about the whole mess, except perhaps the extent of the various actions, motions and hearings that piled up, considering all of the events happened over only a few short months in 2007.

There were also other court actions involving the one Plaintiff, Patricia Moore-O'Neill, and other parties, either landlord/tenant disputes or more disputes over animals. We have no way of knowing how many of these actions there were, because most of the evidence of these other court proceedings that the Defendants tried to introduce was not admissible, not being based on personal knowledge. A variety of prior orders, reported decisions and transcripts of proceedings were, however, properly placed into evidence. For example, in O'Neill v. Peden, 2006 ABQB 715, Mr. Justice Lee considered an appeal from Ms. Moore-O'Neill's application for a stay of the termination of a residential tenancy and concluded that she was attempting to abuse the process of the Court. In Midwest Property Management v. Moore, 2003 ABQB 581, another eviction proceeding, the landlord had sought an order prohibiting Ms. Moore-O'Neill from commencing further actions or applications relative to the lease agreement. In Moore (c.o.b. Lonepine Kennels) v. Tkachyk, 2002 ABQB 653, Ms. Moore-O'Neill brought an applicatio n for a replevin order for a dog, after she had already lost the same application in Provincial Court, a detail she neglected to tell Master Funduk about. In his characteristically witty fashion, Master Funduk noted, at paragraph 13, "Lawsuits are not sporting events. It is not the Court's function to fill the lacuna in people's lives. That is what movie theatres are for."

After reviewing the facts and the new vexatious litigant provisions in the Judicature Act, Associate Chief Justice Wittmann turned to the criteria for declaring an individual a vexatious litigant. He found her application for a replevin order in Moore v. Tkachyk was an attempt to determine an issue that had already been determined by a court of competent jurisdiction. It and her application in Midwest Property Management had no reasonable prospect of success. Her application in O'Neill v. Peden, characterized by the Court in that case as an attempt to abuse the process of the Court, was made with the improper purpose of allowing her to live rent-free for an additional period of time. Associate Chief Justice Wittmann therefore found Ms. Moore-O'Neill had persistently abused the processes of the courts for improper purposes. He also found her repeated failure to pay costs awarded against her and her several attempts to mislead the Court amounted to "persistently engaging in inappropriate courtroom behaviour," another one of the factors characterized by the Judicature Act as vexatious.

In the end, he was satisfied the female Plaintiff was indeed a vexatious litigant and he issued an order preventing her from institut ing further proceedings or continuing proceedings already instituted, without leave of the Court in which the proceeding is initiated or continued. That is the only type of order allowed under s. 23.1(1) of the Judicature Act. Such an order, as Associate Chief Justice Wittmann noted, did not limit the scope of manner of Ms. Moore-O'Neill's defence to actions brought by others.

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