NOVA SCOTIA COURT OF APPEAL

Citation: *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92

Date: 20151009
Docket: CA 430117
Registry: Halifax

Between:

Thomas Percy Tupper

Appellant

v.

The Attorney General of Nova Scotia Representing Her Majesty the Queen in right of Nova Scotia, Judgment Recovery (N.S.) Ltd., Harold F. Jackson, Q.C., Paul L. Walter, Q.C., Rob Stewart, Q.C., John Kulik, Q.C.

Respondents

Judges:	MacDonald, C.J.N.S., Saunders, Hamilton, Beveridge, and Van den Eynden, JJ.A.
Appeal Heard:	April 9, 2015, in Halifax, Nova Scotia
Held:	Appeal dismissed without costs, per reasons for judgment of MacDonald, C.J.N.S.; Saunders, Hamilton, Beveridge and Van den Eynden, JJ.A. concurring.
Counsel:	Thomas Percy Tupper, self-represented appellant Duane Eddy, for the respondent, The Attorney General of Nova Scotia Michael R. Brooker, Q.C., for the respondent, Judgment Recovery (N.S.) Ltd. Jason Cooke, for the respondents, Harold F. Jackson, Q.C., Paul L. Walter, Q.C., Rob Stewart, Q.C., John Kulik, Q.C. John Merrick, Q.C., *amicus curiae*

Reasons for judgment:

OVERVIEW

[1] Nova Scotia's judiciary strives for timely and efficient access to its courts. This challenge is increased when some litigants abuse the process by taking more than their fair share. The math is simple. Every sitting day taken up by one litigant represents a day denied to those waiting in line. Thus, we must strike the appropriate balance between ample accommodation for legitimate users and appropriate deterrence for would-be abusers.

[2] The abusers are commonly referred to as vexatious litigants and in this appeal we consider whether the appellant, Thomas Percy Tupper, fits that category.

BACKGROUND

[3] For years now, Mr. Tupper has been engaged in a relentless crusade as a self-represented litigant. For him, it is a legitimate quest for justice. For the respondents, it is an abusive pursuit of a baseless claim, which continuously expands to include anyone who gets in his way.

[4] The claim dates back to the 1980's when the Supreme Court of Nova Scotia found Mr. Tupper to be partially at fault for striking a pedestrian while operating his motorcycle. In a decision dealing with matters preliminary to this appeal (2014 NSCA 115), I relayed this background:

> [2]…This incident, he firmly believes, has triggered a conspiracy against him, involving all sectors of the justice system. His response has been to unleash a multitude of actions against a list of conspirators that continues to expand. Justice Glen McDougall of the Supreme Court, in one of Mr. Tupper's many cases (2013 NSSC 290 (CanLII)), recently explained:
>
> > [4] **The Accident:** The alleged conspiracy began on the night of June 4, 1983 when Mr. Tupper struck a pedestrian while driving his motorcycle on the highway in Kentville, Nova Scotia. The pedestrian brought an action in negligence against Mr. Tupper. Mr. Tupper was uninsured and did not defend the claim. The claim against him was defended by Judgment Recovery (N.S.) Ltd. The pedestrian was represented by Paul Walter, Q.C. Judgment Recovery was represented by Harold Jackson, Q.C.

[5] At trial, Justice Grant found that both Mr. Tupper and the pedestrian had been negligent. Liability was apportioned 75 percent to Mr. Tupper for driving his motorcycle without headlights on and 25 percent to the pedestrian whose inebriated state limited his ability to avoid the collision. Damages were awarded to the pedestrian and paid by Judgment Recovery. Judgment Recovery then pursued Mr. Tupper for repayment.

[6] Mr. Tupper sought advice from lawyer Robert Stewart, Q.C. on whether or not to appeal the trial decision. Mr. Stewart recommended against an appeal.

[7] At some point after his discussions with Mr. Stewart, Mr. Tupper became convinced that the pedestrian's claim against him had been fraudulent. In Mr. Tupper's view, the pedestrian had intentionally placed himself in the path of the oncoming motorcycle in order to sue for damages. To support this theory, Mr. Tupper cites several portions of the trial decision including reference by the judge to the pedestrian's statement that "it was not up to him to move" when he heard the motor bike approaching.

[8] In Mr. Tupper's mind, each of the lawyers who participated in his trial and Mr. Stewart were aware, by virtue of their legal training, that damages should be awarded only to victims of genuine accidents. Accordingly, Mr. Tupper asserts that these lawyers became party to the insurance fraud by allowing him to be victimized by the pedestrian.

[9] **The 2007 Action:** As a result of Mr. Tupper's inability to make payments to Judgment Recovery, his driver's licence has been suspended since August of 1985. In 2007, Mr. Tupper filed an action against the Province, Judgment Recovery and Judgment Recovery's lawyers, Mr. Jackson and John Kulik, Q.C., for damages flowing from the suspension of his license. The Nova Scotia Supreme Court dismissed the action against all parties except the Attorney General. The Nova Scotia Court of Appeal upheld the dismissal. By defending the parties sued by Mr. Tupper in this action, lawyers Catherine Lunn, Michael Brooker, Q.C., and Michael Wood, Q.C. (as he then was) were added by Mr. Tupper to the list of those knowingly involved in the conspiracy against him.

[10] **The Complaint to NSBS:** On October 31, 2011, Mr. Tupper filed a complaint against these 7 lawyers with NSBS. On November 16, 2011, Victoria Rees, Director of Professional Responsibility for NSBS, informed Mr. Tupper that his complaint was being dismissed because it revealed no evidence of misconduct on the part of the lawyers. Ms. Rees advised Mr. Tupper of his right under the regulations of the *Legal Profession Act*, SNS 2004, c 28 to request a review of the dismissal by a Review

> Subcommittee. Mr. Tupper requested this review on December 16, 2011. In the materials he submitted to the Review Subcommittee, Mr. Tupper accused Ms. Rees of bias and fraud and requested her disbarment.
>
> [11] On February 21, 2012, the Review Subcommittee upheld the dismissal of Mr. Tupper's complaint. Mr. Tupper proceeded to appeal the decision to the Nova Scotia Court of Appeal. On March 27, 2012, Mr. Tupper was informed by Stephen McGrath, counsel for the Attorney General of Nova Scotia that the *Legal Profession Act* does not grant a right of appeal from decisions made by the Review Subcommittee and suggested that he may be able to file an application for judicial review under Rule 7 of the Civil Procedure Rules. Two days later, counsel for the respondent, Raymond Larkin, Q.C., sent Mr. Tupper an e-mail informing him that a complainant has no right of appeal under the Act and that his only option would be an application to this Court for judicial review.
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> [12] Despite the comments of Mr. McGrath and Mr. Larkin, Mr. Tupper was determined to proceed with the appeal. On April 10, 2012, the respondent filed notice of its intention to participate in the appeal and again noted the absence of a right of appeal under the legislation. When Mr. Tupper came before the Court of Appeal on January 23, 2013, he acknowledged that he had no right of appeal but argued that the absence of such an appeal was unconstitutional. The Court of Appeal concluded that the constitutional argument was entirely without merit and dismissed the appeal for lack of jurisdiction.
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> [13] Mr. Tupper filed an application for leave to appeal the Court of Appeal's decision to the Supreme Court of Canada. His application was denied on June 27, 2013.

[5] The present appeal has two aspects. Firstly, Mr. Tupper challenges an order of Justice N.M. Scaravelli of the Supreme Court where he: (a) dismissed one of Mr. Tupper's related actions; and (b) declared Mr. Tupper to be a vexatious litigant and restrained him from pursuing any related litigation without first obtaining leave of the Court.

[6] Secondly, the Attorney General, by way of a separate motion, seeks the same declaration with similar consequences for all appeals that may be filed by Mr. Tupper to this Court**.** This was first presented to me as a single motions judge, and I referred it to a panel of the Court proper, to be heard in conjunction with Mr. Tupper's appeal.

[7] With Mr. Tupper being unrepresented, the Court appointed Mr. John Merrick Q.C. as *amicus curiae.* His task was to aid the Court in striking that appropriate balance to which I have referred. We are grateful for his assistance.

[8] For ease of reference, I have appended the operative statutory provisions and Civil Procedure Rules.

ISSUES

[9] Here are Mr. Tupper's grounds of appeal.

> Ground one – error in law – he based his decision wrongly in part on the June 5, 2014 decision of J. Scanlan that is under appeal to Chief Justice, and the decision of J. MacDougall in Tupper v. NSBS/NSAG on appeal – hearing September 15, 2014. Both decisions he relies on are in error and should not have been used until the appeals are complete. The decisions were obtained by fraud.
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> Ground two – error in law – bias – he ignores the merits of my claim, he ruled the SCC is wrong, he just relies on other judge rulings in this case and offers NO point by point analysis of my claim + brief – NO analysis = error in law, he won't explain why the SCC is wrong.
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> Ground three – error in law/fact – he ruled I can pay cost and so I should have money to live on as a poor disabled person – which is on appeal to the chief justice.
>
> Ground four – error in law/fact – he ruled my 2005 claim is the same as my 2014 claim – that my new claim has no factual basis – but won't do point by point analysis because it would point out his errors.
>
> Ground five – error in law – he dismissed my constitutional torts for no given reason – the SCC says I have the right to declare laws and actions unconstitutional – nor would I have to pay costs.
>
> Authority for appeal
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> The 1982 Constitution – Charter of Rights.
>
> Order requested
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> The appellant says the court should allow the appeal and that the judgment order appealed from be reversed and that my action not be declared an abuse of process, or I be declared a vexatious litigant, and that my claim be allowed to proceed.

[10] These grounds of appeal are confusing and of little assistance in identifying a live issue on appeal. The supporting factum is no better. Therefore, in my analysis that follows, I will, instead, address the following:

1. Mr. Tupper's challenge to the order dismissing his action;

2. Mr. Tupper's challenge to the vexatious litigant declaration;

3. The Attorney General's motion to have Mr. Tupper declared a vexatious litigant in this Court; and

4. Guidance for future vexatious litigant motions.

[11] As necessary, I will identify and apply the appropriate standard of review for each issue.

ANALYSIS

The Dismissal Order

[12] The judge dismissed Mr. Tupper's action for two reasons. First, the action requested essentially the same relief that had already been denied by an earlier court order. As such, it was an abuse of process by re-litigation. For the judge, this, on its own, represented a basis for dismissal:

> [7] Dismissing an action for abuse of process is an exceptional remedy used only in the clearest cases of abuse of the court process. In these instances the court exercises its inherent power to prevent vexatious and other litigants from bringing the administration of justice into disrepute.
>
> [8] The present action stems from the 1983 motor vehicle accident as is the case in all legal proceedings to date. The essence of the action is set out in paragraph 7 of the Amended Statement of Claim:
>
> > This is a lawsuit on how Larry Hake and four lawyers conspired to commit insurance fraud, extortion, etc., had me pay back their stolen money to the insurance company they robbed and when I couldn't pay, my driver's license was suspended January 19, 1987 to the present / future. And it's about charter rights violation.
>
> [9] The claim goes on to recount Mr. Tupper's versions of the events surrounding the accident and subsequent proceedings. The issues raised in the current proceeding have ostensibly been dealt with in the previous proceedings. The allegations contained in the previous proceedings are often repeated and supplemented with different wording. Attempts to re-litigate a claim which the court has already determined is an abuse of process.

[13] Secondly, the judge also found Mr. Tupper's pleadings to be unsustainable:

> [11] I would also grant summary judgment on the pleadings pursuant to Civil Procedure Rule 13.03. Although some of the allegations in the current proceeding use different language, the allegations are essentially the same as the 2005 proceeding where the claim was dismissed. The additional allegations of fraud / conspiracy and abuse of process do not have a factual basis. In summary the claim fails to disclose a reasonable cause of action against any of the defendants. The claim does not set out any material facts to support the allegations made and as such, the allegations are unsustainable.
>
> [12] The action is dismissed.

[14] For the following reasons, I would uphold this aspect of the appeal.

[15] I begin with the abuse of process finding and this basic premise – our courts cannot be subject to abuse. There are many reasons for this but two stand out. Firstly, in the adversarial context, a court that tolerates abuse by one litigant, inevitably permits an injustice to the opposing litigant. Secondly, and more fundamentally, courts cannot function unless their decisions and judgments are respected. To be respected, they must stand firm against abuse. Otherwise, the entire system risks falling into disrepute.

[16] It is not surprising, therefore, that Nova Scotia's Civil Procedure Rules expressly acknowledge the court's ability to address abuse with various remedies:

> 88.01 (1) These Rules do not diminish the inherent authority of a judge to control an abuse of the court's processes.
>
> (2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.
>
> (3) This Rule provides procedure for controlling abuse.
>
> 88.02 (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:
>
> (a) an order for dismissal or judgment;
>
> (b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;
>
> (c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;
>
> (d) an order to indemnify each other party for losses resulting from the abuse;
>
> (e) an order striking or amending a pleading;

> (f) an order expunging an affidavit or other court document or requiring it to be sealed;
>
> (g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;
>
> (h) any other injunction that tends to prevent further abuse.

[17] One of the most common types of abuse occurs when unsuccessful claimants are not satisfied with their "day in court". They attempt to re-litigate the same cause of action. The Supreme Court of Canada recognized this in *Toronto v. CUPE Local 79*, [2003] 3 S.C.R. 77:

> 37 In the context that interests us here, 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 . . . bring the administration of justice into disrepute" (*Canam Enterprises Inc. v. Coles* (2000), 2000 CanLII 8514 (ON CA), 51 O.R. (3d) 481 (C.A.), at para. 55, *per* Goudge J.A., dissenting (approved [2002] 3 S.C.R. 307, 2002 SCC 63 (CanLII))). Goudge J.A. expanded on that concept in the following terms at paras. 55-56:
>
> > 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. It is a flexible doctrine unencumbered by the specific requirements of concepts such as issue estoppel. See *House of Spring Gardens Ltd. v. Waite*, [1990] 3 W.L.R. 347 at p. 358, [1990] 2 All E.R. 990 (C.A.).
> >
> > One circumstance in which abuse of process has been applied is where the litigation before the court is found to be in essence an attempt to relitigate a claim which the court has already determined. [Emphasis added.]
>
> As Goudge J.A.'s comments indicate, Canadian courts have applied the doctrine of abuse of process to preclude relitigation in circumstances where the strict requirements of issue estoppel (typically the privity/mutuality requirements) are not met, but where allowing the litigation to proceed would nonetheless violate such principles as judicial economy, consistency, finality and the integrity of the administration of justice. (See, for example, *Franco v. White* (2001), 2001 CanLII 24020 (ON CA), 53 O.R. (3d) 391 (C.A.); *Bomac Construction Ltd. v. Stevenson*, 1986 CanLII 3573 (SK CA), [1986] 5 W.W.R. 21 (Sask. C.A.); and *Bjarnarson v. Government of Manitoba* (1987), 38 D.L.R. (4th) 32 (Man. Q.B.), aff'd (1987), 21 C.P.C. (2d) 302 (Man. C.A.).) This has resulted in some criticism, on the ground that the doctrine of abuse of process by relitigation is in effect non-mutual issue estoppel by another name without the important qualifications recognized by the

> American courts as part and parcel of the general doctrine of non-mutual issue estoppel (Watson, *supra*, at pp. 624-25).
>
> 38 It is true that the doctrine of abuse of process has been extended beyond the strict parameters of *res judicata* while borrowing much of its rationales and some of its constraints. It is said to be more of an adjunct doctrine, defined in reaction to the settled rules of issue estoppel and cause of action estoppel, than an independent one (Lange, *supra*, at p. 344). The policy grounds supporting abuse of process by relitigation are the same as the essential policy grounds supporting issue estoppel (Lange, *supra*, at pp. 347-48):
>
> > The two policy grounds, namely, that there be an end to litigation and that no one should be twice vexed by the same cause, have been cited as policies in the application of abuse of process by relitigation. Other policy grounds have also been cited, namely, to preserve the courts' and the litigants' resources, to uphold the integrity of the legal system in order to avoid inconsistent results, and to protect the principle of finality so crucial to the proper administration of justice.

[18] Here, as the judge properly noted, this present action is simply another iteration of the same cause that has already been rejected by our courts. It has been made abundantly clear to Mr. Tupper that there is no merit to his conspiracy theory. Mr. Hake did not intentionally allow Mr. Tupper to strike him with his motorcycle that fateful evening so that he could make some money in a subsequent lawsuit. Nor were the lawyers involved in Mr. Hake's claim (including Mr. Tupper's own lawyer) part of a larger conspiracy to cover all this up. The judge was right to declare this present action to be an abuse of process.

[19] Nor, in my view, did the judge err by dismissing the action in order to remedy this abuse. This was a discretionary decision with our ability to interfere limited to errors in law or a resultant patent injustice. See *Innocente v. Canada (Attorney General)*, 2012 NSCA 36 at ¶ 26 to 29. Here there was no error in law, and dismissing an action that had already been adjudicated and dismissed was the only logical remedy. In fact, allowing it to proceed would have been patently unjust to the respondents.

[20] For many of the same reasons, I would sustain the judge's decision to dismiss Mr. Tupper's action solely on the basis of his pleadings. The judge properly found that these pleadings, having already been adjudicated, were absolutely unsustainable on their face. This is in addition to the fact that they would all be statute barred. As such, they were properly dismissed. See *Cape Breton (Regional Municipality) v. Nova Scotia (Attorney General)*, 2009 NSCA 44 at ¶ 17. In fact, the judge was left with little choice but to dismiss them. In other

words, as this Court explained in *Innocente, supra,* there is little if any room for discretion in such circumstances:

> [23] Whether to grant an order for summary judgment on the pleadings usually is not discretionary. It is a matter of law, premised on assumed facts, and involves analysis and comparison of the written pleadings and the legal prerequisites for the cause of action that is advanced. Rule 13.03 confirms this:
>
> > (1) A judge ***must*** set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways ...
> >
> > (2) The judge ***must*** grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances ...
> >
> > (3) A motion for summary judgment on the pleadings ***must*** be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion. [emphasis added]
>
> Justice Coady's reasons that are under appeal cited Rule 13.01(1)'s requirement that he "must" set aside the Statement of Claim (para 30 of decision - quoted below, para 30). Justice Coady did not purport to exercise a discretion.

The Vexatious Litigant Declaration

[21] After dismissing the instant action, the judge felt the need to do more to prevent Mr. Tupper from prosecuting further abusive claims. He declared him to be a vexatious litigant:

> [10] Mr. Tupper is a vexatious litigant. As indicated he has brought a number of actions to determine issues that already have been dealt with. He has been persistent in taking unsuccessful appeals from judicial decisions. He has failed to pay costs of unsuccessful proceedings. He has made scurrilous and unsubstantiated accusations against all defendants charging malice, bad faith, gross negligence, extortion, and intimidation. This repeated litigation is a misuse of the court's process and resources. It requires the defendants to dedicate time and resources to respond.

[22] The judge further prohibited Mr. Tupper from commencing related proceedings without leave of the court.

> [13] Subject to an appeal of this decision, I order that Mr. Tupper shall not take any further steps in these proceedings nor commence any further proceedings against the defendants relating to Mr. Tupper's involvement in the 1983 motor vehicle accident with Mr. Hake, without leave of the court. I award costs in the

amount of $750.00 to the Attorney General, $750.00 to Judgment Recovery and $750.00 to solicitor defendants.

[23] The ability to declare a litigant vexatious and to restrain him accordingly is now provided within our *Judicature Act*, R.S.N.S. 1989, c. 240, s. 1:

> 45B (1) Where a court is satisfied that a person has habitually, persistently and without reasonable grounds, started a vexatious proceeding or conducted a proceeding in a vexatious manner in the court, the court may make an order restraining the person from
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> (a) starting a further proceeding on the person's own behalf or on behalf of another person;
>
> (b) continuing to conduct a proceeding,
>
> without leave of the court.
>
> (2) The court may make the order apply to a spokesperson or agent of a party or to any other person specified by the court who in the opinion of the court is associated with the person against whom the order is made.
>
> (3) Notice of a motion for an order under subsection (1) or (2) must be given to the Minister of Justice and Attorney General, except when the Minister is a party to the proceeding in respect of which the motion is made.
>
> (4) A motion for an order under subsection (1) or (2) may be made by the party against whom the vexatious litigation has been started or conducted, a clerk of the court or, with leave of the court, any other person.
>
> (5) An order may not be made against counsel of record or a lawyer who substitutes for counsel of record. *2009, c. 17, s. 1.*

[24] Our Civil Procedure Rules prescribe the process to invoke this provision:

> 88.02 (2) A person who wishes to make a motion under section 45B of the *Judicature Act* may do so by motion in an allegedly vexatious proceeding or a proceeding allegedly conducted in a vexatious manner, or by application if there is no such outstanding proceeding.

[25] This actually codifies the Courts' long held inherent jurisdiction to control its own process. My colleague Justice Saunders in *Halifax (Regional Municipality) v. Ofume*, 2003 NSCA 110 explains this authority:

> [40] …In the instant case the discretion exercised by Justice MacAdam derives from the Court's inherent jurisdiction to control its own proceedings. I see this control as fundamental to a court that derives its power and existence not

> from statute but from the Constitution. The operation of the court is a necessary function of our society. The inherent jurisdiction which helps to maintain the efficiency and fairness of such a court is something far greater than the jurisdiction to correct substantive problems, as was considered in **Baxter**. The inherent jurisdiction exercised by the Chambers judge here is the kind of jurisdiction spoken of by Lord Morris in **Connelly,** supra, quoted in **Montreal Trust Co., supra**, which gives rise to the "powers which are necessary to enable [a court] to act effectively".

[26] See also *Ontario v. Criminal Lawyers' Association of Ontario*, 2013 SCC 43 at ¶ 12 and 26 and *National Bank Financial Ltd. v. Barthe Estate*, 2015 NSCA 47 at ¶ 176 to 180.

[27] Yet, as Mr. Merrick succinctly explained in his factum, s. 45B does not replace our inherent jurisdiction. Instead, I agree that the two work hand in hand:

> 21. There is considerable authority to support the principle that both this Court and the Nova Scotia Supreme Court have an inherent authority to declare a litigant to be vexatious (see for example the submission of the Respondent Judgment Recovery (N.S.) Ltd. at p. 14 ff of their factum). That inherent jurisdiction would be the basis for *Civil Procedure Rule 88.*
>
> 22. It is submitted that inherent jurisdiction includes the jurisdiction to impose terms or conditions necessary to achieve the objective of restricting the actions of a litigant that are found to be vexatious.
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> 23. In addition to the inherent jurisdiction, both Courts have also been granted jurisdiction pursuant to section *45B of the Judicature Act.*
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> 24. It is submitted that the two sources of jurisdiction are to be read as cumulative. To the extent one may be broader in scope, that broader scope is to be given effect.

[28] Turning to the merits of this issue, in my view, the judge had ample reason to grant this relief. The record clearly supports the conclusion that Mr. Tupper is a vexatious litigant and that this present action is vexatious. Furthermore, the judge's restrictions are reasonable. In these circumstances, it is more than reasonable to expect Mr. Tupper to secure leave before attempting to continue his crusade. In fact, as I will discuss later in this judgment, broader sanctions may be called for in appropriate circumstances.

[29] In short, given our limited role to interfere only in the face of an error of law or patent injustice, there is no basis whatsoever to alter this disposition.

The Attorney General's Motion

[30] The Attorney General seeks to have Mr. Tupper similarly restrained in this Court. In doing so, she relies on the same litany of vexatious proceedings that prompted Justice Scaravelli to issue his restraining order. As well, she highlights the following abuse, specific to this Court:

- **Mr. Tupper's Conduct Before the Nova Scotia Court of Appeal**

Upon a reasonable review of the record of legal proceedings involving Mr. Tupper it is patently obvious that Mr. Tupper is an individual who has abused the litigation process in both the Nova Scotia Supreme Court and Court of Appeal. With respect to the Court of Appeal, no appeal that has been filed by Mr. Tupper has succeeded. Moreover, the appeal presently before the court in CA No. 430117 will be no exception.

The Attorney General submits that Mr. Tupper's appeal in CA No. 430117 has no reasonable chance of success when his grounds of appeal, as cited in his Notice of Appeal, are reviewed. For example, Mr. Tupper cites under ground one, that Justice Scaravelli erred in referencing the decisions of Justice Scanlan 2014 NSCA 60 (supra) and Justice MacDougall 2013 NSSC 290 (supra). Mr. Tupper states under ground one that both decisions were obtained by fraud on the part of each Respondent:

> Both decisions he relies on are in error and should not have been used until the appeals are complete. The decisions were obtained by fraud.

Ground one is the first example of why Mr. Tupper's appeal in CA No. 430117 is simply another attempt to re-litigate outrageous allegations that have already been adjudicated. Further examples of Mr. Tupper's vexatious conduct can be found in Mr. Tupper's brief, filed May 30, 2014, with respect to CA No. 425814 and referenced in my solicitor's affidavit as exhibit "E", on file herein. Mr. Tupper in his submissions filed May 30, 2014 states the following at paragraph 1:

> Your Honour – please accept this as my brief in the defence Security of Cost motion – given the defence fraud in past cases and now Mr. Cooke lying in his SWORN affidavit it's clear they don't want my October 7, 2014 appeal hearing to expose lawyer corruption. None of my other appeals have a security for cost motion – they are simply trying every motion to obstruct justice.

The Attorney General submits that Mr. Tupper's allegation, cited above, that Mr. Cooke is a liar and the suggestion that the Respondent's security for costs motion is really a cover up of "lawyer corruption", is vexatious and abusive.

Yet another example of Mr. Tupper's vexatious conduct is contained in Mr. Tupper's brief filed August 7, 2014 in relation to CA No. 42141, and referenced in my solicitor's affidavit as exhibit "F". In his submissions, Mr. Tupper reiterates, at para. 1, his intention to come before the courts to re-litigate matters that have already been determined:

> It's a waste of court time to not let me use my fresh evidence because I will simply, re NSBS, complain with my new evidence then it's probably back to the courts.

Mr. Tupper's statement "then it's probably back to the courts" demonstrates Mr. Tupper's consistent impulse and desire to initiate legal proceedings over and over again. Consequently, the result of allowing Mr. Tupper to proceed with his appeal in CA No. 430117 will be that it will compel the Respondent's to not only respond to claims that have been determined but it will also compel the Respondent's to respond to grounds of appeal that impugn Justice Scaravelli's recognition of the Respondent's interest in having their dealings with Mr. Tupper ended.

CONCLUSION

Unless restrained by this court Mr. Tupper will continue to advance appeals naming one or more of the Respondent's in CA No. 430117. Mr. Tupper, if permitted, will also continue to consume counsel's time and misuse scarce judicial resources at significant public expense. My Lord, Mr. Tupper is an extraordinary vexatious litigant in that the more legal proceedings that are dismissed in favor of the Respondent's the more resolved Mr. Tupper is to continue to inflict abuse on the parties themselves through the litigation process. All of Mr. Tupper's allegations and claims advanced over the course of several years have no merit and should not be entertained by the courts any further. A reasonable person after reviewing the record of legal proceedings involving Mr. Tupper would not conclude that there is any foundation justifying Mr. Tupper's conduct and misuse of judicial resources. Mr. Tupper has demonstrated a complete disregard for the Respondent's legitimate interest in having proceedings finally determined. Mr. Tupper's relentless and vexatious conduct has also interfered with the proper administration of justice in permitting legitimate claims from proceeding more expeditiously. If Mr. Tupper's conduct is permitted to persist then in the Attorney General's opinion it will diminish public confidence in the integrity of our justice system.

My Lord, in summation, the Attorney General notes the comments of Justice Bourgeois in ***Mercier v. Nova Scotia (Police Complaints Commissioner)*** [2004] N.S.J. No. 580:

> Citizens have the right to have their legitimate disputes heard before the courts, but one must not lose sight, even in the face of relatively modest cost awards such as in the present case, that there are significant costs associated with those pursuits. The right to argue every point, make every allegation and appeal every decision, is not limitless.

[31] I accept this submission in its entirety. Mr. Tupper's various vexatious proceedings in this Court alone are enough to justify the order requested. However, my analysis need not be confined to proceedings before this Court. Instead, in my view, Nova Scotia courts considering such motions must be at

liberty to consider an impugned litigant's entire civil court record, whether within the Trial Court or the Court of Appeal. I say this because these provisions do more than prevent abuse in the subject court. They serve the broader purpose of protecting the integrity of the entire justice system. In my view, therefore, harm to one court is harm to all courts.

[32] As well, vexatious litigants display a fundamental disrespect for the entire court process. They do not distinguish between levels of court. How they act in one court is a strong indicator of how they will act in another.

[33] Furthermore, this approach is consistent with the statutory scheme detailed above. For example, s. 45B is triggered when a vexatious proceeding is started or conducted in "the court", while s. 45A defines "court" as either the Supreme Court or the Court of Appeal. In other words, the Supreme Court can restrain a vexatious litigant's actions in that court and the Court of Appeal can do likewise for its proceedings. However, when exercising this discretion, each should have the ability to consider a purported vexatious litigant's record in either court. This was the approach taken by the British Columbia Court of Appeal in *Dawson v. Dawson*, 2014 BCCA 44 when considering similar legislation:

> [26] In summary, we are persuaded that Mr. Dawson is a vexatious litigant. His conduct in this Court alone justifies that conclusion. But his conduct in the litigation generally, in the Supreme Court as well as this Court, also informs our conclusion. In both courts he has brought multiple proceedings on issues already decided against him and that are devoid of merit. The proceedings have involved improper conduct and harassment, including defamatory statements and threats against Ms. Corfield and her counsel. Mr. Dawson's obsessive pursuit of these proceedings has drained the resources of Ms. Corfield, compelled her counsel to respond to unfounded allegations, and is conduct that cannot, nor likely ever would, be adequately compensated in costs. Mr. Dawson's conduct exemplifies many of the factors set out in para. 16 above.

[34] Interestingly, Ontario opted for a different legislative approach. There, according to the *Courts of Justice Act*, R.S.O. 1990, c. 43, only the trial court has the expressed legislative ability to restrain a vexatious litigant. However its ability to do so reaches to "any court".

> 140. (1) Where a judge of the Superior Court of Justice is satisfied, on application, that a person has persistently and without reasonable grounds,
>
> (a) instituted vexatious proceedings in any court; or
>
> (b) conducted a proceeding in any court in vexatious manner,

> The judge may order that,
>
> > (c) no further proceedings be instituted by the person in any court; or
> >
> > (d) a proceeding previously instituted by the person in any court not be continued,
>
> Except by leave of a judge of the Superior Court of Justice.

[35] As the Ontario Court of Appeal confirmed in *Deep v. College of Physicians and Surgeons (Ontario)*, 2011 ONCA 196 "any court" includes both the trial court and the court of appeal:

> [5] For the sake of clarity, we state that, going forward, Dr. Deep must seek the leave of a superior court judge before taking any step in any proceeding in any court in Ontario, including this court: see *Varma v. Rozenberg*, 1998 CanLII 4334 (ON CA), 1998 CanLII 4334 (O.N. C.A.), at para. 5.

[36] For all these reasons, I would grant the Attorney General's motion to declare Mr. Tupper a vexatious litigant in this Court and, as requested, to prohibit him "from commencing further appeals in the Nova Scotia Court of Appeal, relating to the pleadings and allegations set forth in the proceedings identified under Hfx. No. 410543 and S.H. No. 255102 (now referenced as Hfx. No. 255102), without leave" of the Court of Appeal, or a judge thereof.

Guidance for Future Motions

[37] As the above analysis reveals, Mr. Tupper is clearly a vexatious litigant. However, it would be opportune to offer some guidance for future motions, where the outcome may be less obvious. My comments are offered to help and not bind future courts. Specifically, I will consider the following:

- The Basic Principles
- Restraining Order Parameters
- The Test for Granting a Vexatious Litigant Leave to Continue or Commence Another Proceeding
- A Vexatious Litigant's Rights of Appeal

The Basic Principles

[38] When considering s. 45B motions, we should keep several fundamental principles in mind.

[39] First and foremost, s. 45B restraining orders should be reserved for the clearest of cases and used only where necessary to prevent ongoing abuse. Here I agree with Mr. Merrick in his factum:

> 30. Access to the courts is critically important to our society. In particular it is essential that such access be assured for those who espouse minority causes, unpopular issues or dubious claims. The proceedings of our courts must be open not only to college presidents but also those who we might view as being stupid or ignorant.
>
> 31. It is submitted there is a distinction between a litigant bringing a vexatious proceeding and a vexatious litigant. A vexatious proceeding can normally be controlled by the existing procedural provisions dealing with summary judgment. An example is the motion for summary judgment which was granted by Justice Scaravelli.
>
> 32. It is further submitted that there is a distinction between a vexatious litigant and a troublesome litigant who, because of the fervour of their belief in their cause, and/or lack of understanding of the Court processes, causes difficulty in a particular proceeding. It is often a fine line that separates those to whom we consider troublesome but grudgingly permit access to the courts and those who we consider vexatious and deny access. When does a troublesome litigant becomes a vexatious litigant?
>
> 33. While some vexatious litigants are fully cognizant and aware of the significance of the actions that they pursue, becoming "legal bullies", others may, by reason of mental illness, lack of knowledge of the judicial process, or simply a zeal for what they truly perceive as the merits of their claim, do not see anything wrong with their actions. From their perspective there is nothing vexatious about their claim. Care has to be taken by the Court to ensure that underneath all the vexatious maneuvering there is no substance or merit to any aspect of the claims that is worthy of being considered by the Court.
>
> > *You never really understand a person until you consider things from his point of view … until you climb into his skin and walk around in it." (*Lee, Harper. *To Kill a Mockingbird.* Philadelphia: Lippincott, 1960.*)*

[40] Therefore, not every zealous pursuit of a claim with questionable merit, is vexatious. Nor is every frivolous claim. As Mr. Merrick indicates, there are avenues short of s. 45B motions to summarily deal with questionable claims. Take for example, the ability to dismiss a claim when the pleadings are unsustainable:

> **Summary judgment on pleadings**

13.03 (1) A judge must set aside a statement of claim, or a statement of defence, that is deficient in any of the following ways:

(a) it discloses no cause of action or basis for a defence or contest;

(b) it makes a claim based on a cause of action in the exclusive jurisdiction of another court;

(c) it otherwise makes a claim, or sets up a defence or ground of contest, that is clearly unsustainable when the pleading is read on its own.

(2) The judge must grant summary judgment of one of the following kinds, when a pleading is set aside in the following circumstances:

(a) judgment for the plaintiff, when the statement of defence is set aside wholly;

(b) dismissal of the proceeding, when the statement of claim is set aside wholly;

(c) allowance of a claim, when all parts of the statement of defence pertaining to the claim are set aside;

(d) dismissal of a claim, when all parts of the statement of claim that pertain to the claim are set aside.

(3) A motion for summary judgment on the pleadings must be determined only on the pleadings, and no affidavit may be filed in support of or opposition to the motion.

[41] Judgment may also be granted summarily if the evidence (or lack thereof) discloses no genuine issue for trial:

Summary judgment on evidence

13.04 (1) A judge who is satisfied that evidence, or the lack of evidence, shows that a statement of claim or defence fails to raise a genuine issue for trial must grant summary judgment.

(2) The judge may grant judgment for the plaintiff, dismiss the proceeding, allow a claim, dismiss a claim, or dismiss a defence.

(3) On a motion for summary judgment on evidence, the pleadings serve only to indicate the laws and facts in issue, and the question of a genuine issue for trial depends on the evidence presented.

(4) A party who wishes to contest the motion must provide evidence in favour of the party's claim or defence by affidavit filed by the contesting party, affidavit filed by another party, cross-examination, or other means permitted by a judge.

(5) A judge hearing a motion for summary judgment on evidence may determine a question of law, if the only genuine issue for trial is a question of law.

(6) The motion may be made after pleadings close.

[42] Nor will an isolated example of abuse necessarily trigger s. 45B. For example, (again as Justice Scaravelli did in this case) claims can be struck (under Rule 88 quoted above) simply because they represent an abuse of process. In fact, the legislation expressly acknowledges this alternate form of relief:

> 45E Nothing in Sections 45B to 45D limits the authority of a court to make an order in respect of an abuse of a process of the court, including an order for dismissal, a stay or indemnification or to strike a pleading. *2009, c. 17, s. 1.*

[43] Therefore, to engage s. 45B, there must be a pattern of abuse that demonstrates a blatant disregard or contempt for the process. By way of illustration only, The Law Reform Commission of Nova Scotia in its April, 2006 Report on Vexatious Litigants highlighted these non-exhaustive features:

> These summaries illustrate a number of common features involving vexatious litigants. Their claims are often manifestly without merit. They may ignore procedural setbacks, including awards of costs that are made against them. They may resort to multiple, unnecessary proceedings, often against the same person. They may sue anyone whom they perceive as an obstacle to their goals. Vexatious litigants also do not seem to care about the resources – on the part of themselves, other litigants or the public purse – depleted through their actions.

[44] The second principle is a corollary of the first. Courts should do everything reasonably possible to assist legitimate self-represented litigants navigate what for them can be a very intimidating process. This represents a huge challenge for all Canadian courts. For example, Supreme Court of Canada Justice Thomas A. Cromwell recently lead a national committee to study the challenges faced by litigants in civil and family law. Its report, entitled *Access to Civil & Family Justice: A Roadmap for Change*, released October 2013, highlighted the challenges self-represented litigants face:

> **Self-Representation**. As a result of the inaccessibility of early assistance, legal services and dispute resolution assistance, as well as the complexity and length of formal procedures, approximately 50% of people try to solve their problems on their own with no or minimal legal or authoritative non-legal assistance. Many people — often well over 50% (depending on the court and jurisdiction) —

represent themselves in judicial proceedings (usually not by choice).The number is equally — and often more — significant and troubling in family court proceedings. And statistics indicate that individuals who receive legal assistance are between 17% and 1,380% more likely to receive better results than those who do not.

Not surprisingly, people's attitudes towards the system reflect this reality. According to a recent study of self-represented litigants in the Canadian court system, various court workers were of the view that the "civil system [is] ... very much open to abuse by those with more money at their disposal"; and the "general public has no idea about court procedures, requirements, the language, who or where to go for help".

Further, according to a recent study, people expressed similar concerns about access to justice, including the following:

- "I don't have much faith in the lawyers and the system";
- the "language of justice tends to be ... foreign to most people";
- "[p]eople with money have access to more justice than people without";
- I think there are a lot of people who don't ... understand what the justice system is or how to use it – struggling to earn a living, dealing with addictions..."; and
- the justice system "should be equally important as our health care system...."

5. What is Needed? There are clearly major access to justice gaps in Canada.The current system, which is inaccessible to so many and unable to respond adequately to the problem, is unsustainable. Two things are urgently needed.

- **First,** a new way of thinking — a culture shift — is required to move away from old patterns and old approaches. We offer six guiding principles for change reflecting this culture shift in part 2 of this report.
- **Second,** a specific action plan — a goal-oriented access to justice roadmap — is urgently needed. That roadmap, which is set out in part 3 of this report, proposes goals relating to innovation, institutions and structures, and research and funding.

Taken together, what is needed is major, sustained and collaborative system-wide change — in the form of cultural and institutional innovation, research and funding-based reform.

[45] Then in November of 2013 the Canadian Bar Association's Access to Justice Committee released a comprehensive report: *Reaching Equal Justice: An Invitation to Envision and Act*. It also challenges the courts, the Bar and Government to do better:

> One of the greatest pressures on civil courts in Canada and the US today is the exponential growth of unrepresented or self-represented litigants. From one perspective, this is and should be the driving force of reform: courts should change to be more directly accessible to litigants without representation. While recognizing the immediate need to accommodate people without representation, the Committee questions this as a principled foundation for reform. There is mounting evidence that unrepresented litigants are at a high risk of not receiving meaningful access to justice. It is also unfair to all involved for judges and court staff to be responsible for finding solutions to a critical systemic problem resulting from failures of the justice system as a whole, notably including governments and the legal profession.
>
> Certainly, short-term strategies must include accommodating unrepresented litigants and ensuring fair treatment (including by opposing counsel), as outlined in the Macfarlane study, but the ultimate goal should be to transcend the unrepresented litigant phenomenon by providing more seamless delivery of legal services to everyone, including representation when required. This perspective does not mean that there will be no unrepresented people by the Committee's suggested target date of 2030, but it does mean that unrepresented litigants will no longer be considered a "problem". Some people will self-represent, not because there is no viable alternative, but because they are able to do so competently given the nature of their problem or dispute, the process and their capacity to participate fully and effectively with available supports.

[46] This challenge has also been highlighted in recent jurisprudence. For example the Supreme Court of Canada in *Hryniak v. Mauldin*, [2014] S.C.R. 87:

> 1 Ensuring access to justice is the greatest challenge to the rule of law in Canada today. Trials have become increasingly expensive and protracted. Most Canadians cannot afford to sue when they are wronged or defend themselves when they are sued, and cannot afford to go to trial. Without an effective and accessible means of enforcing rights, the rule of law is threatened. Without public adjudication of civil cases, the development of the common law is stunted.
>
> 2 Increasingly, there is recognition that a culture shift is required in order to create an environment promoting timely and affordable access to the civil justice system. This shift entails simplifying pretrial procedures and moving the emphasis away from the conventional trial in favour of proportional procedures tailored to the needs of the particular case. 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.

[47] Motivated by this leadership, courts throughout the country are working with their respective bars and justice departments to promote initiatives that enhance access to justice. Assistance for legitimate self-representatives is a central theme.

[48] From this emerges a third related principle: one that draws us back to the challenges with vexatious litigants. In our desire to help, Courts cannot accommodate to the point of tolerating abuse. As noted, in our adversarial system, abuse by one party directly prejudices the opposing party and erodes the public's confidence in the system generally. So courts can simply not tolerate abuse by any party.

[49] Therefore, in the end, it all comes down to this final principle. Courts must strive to strike that appropriate balance between maximum accommodation for legitimate self-represented litigants and minimum prejudice to the opposing party and the system generally.

Restraining Order Parameters

[50] In this appeal, the judge restrained Mr. Tupper from continuing this action or commencing related actions without leave of the Court. The order provides:

> The Plaintiff Thomas Percy Tupper is hereby prohibited from taking any further steps in this action or from commencing any further proceedings against the Defendants without leave of this Court relating to the pleadings and allegations as set out in this present action (Hf. No. 410543) or the action identified as Hfx. No. 255102 or relating in any way to the Plaintiff's 1983 motor vehicle accident with Larry Hake.

[51] This language should suffice to curtail Mr. Tupper's ongoing abuse of the process. However, in future cases, courts may wish to consider whether litigants, once declared vexatious, should require leave before commencing any future claims (as opposed to only those related to the subject litigation). This would avoid preliminary issues about whether a proposed claim is related or not to the existing matter. In other words, if only related claims are restrained, I can envision a vexatious litigant proclaiming that leave is not required because the proposed new claim is unrelated to the original matter. A blanket restraint would also avoid the practical problem of having our prothonotaries and front desk staff make the call as to whether a proposed new matter is subject to the restraining order.

[52] Some may argue that such an order would be too restrictive. I see it differently. After all, these litigants would have already accumulated a record of abuse. This alone represents a good reason to question their motives in launching subsequent litigation. In fact, in recent years we have seen some litigants whose sole motivation is to wreak havoc on the civil justice system. Unlike Mr. Tupper, who is on a subjective misguided crusade for justice, these litigants seek only

disruption as opposed to justice. My colleague, Justice Saunders in *Doncaster v. Chignecto-Central School Board*, 2013 NSCA 59 explains:

> [45] Litigants, self-represented or not, with legitimate interests at stake will be treated with respect and will quickly come to realize that judges, lawyers and court staff are prepared to bend over backwards to accommodate their needs, to explain procedures that may seem foreign, and to ensure that the merits of their disputes will be heard. They and their cases will be seen as the *raison d'être* for access to justice.
>
> [46] Litigants, self-represented or not, with a different agenda designed to wreak havoc on the system by a succession of endless, mindless or mind-numbing paper or electronic filings, or meant to drive a spouse or opposite party to distraction or despair or financial ruin will quickly come to realize that the Court's patience, tolerance and largesse have worn thin. They and their cases will be seen as an affront to justice and summarily shown the door.
>
> [47] More often than not, the individuals in this latter group whom I would dub "self-serving litigants" leave a trail of unpaid judgments and costs orders in their wake. Judges will not sit idly by as the finite resources of their courts are hijacked by people with computer skills or unlimited time on their hands; at the expense of worthy matters, waiting patiently in the queue for a hearing. Faux litigants will be exposed, soon earning the tag "vexatious litigant" or "paper terrorist" whose offerings deserve a sharp rebuff and rebuke.
>
> [48] Over the past two months I have encountered several such cases. Their number is mounting. I find that troubling. The Bench, the practicing Bar and the public should be concerned. This trespass upon legitimate advocacy is not in the public interest. In the short term it frustrates the efficient passage and completion of litigation. In the long term it erodes and denigrates confidence in and respect for the administration of justice. It defeats a system of dispute resolution managed and overseen by people who are doing the best they can to serve the public in a way that respects and follows the law, and produces a result that satisfies the primary object of the Rules which is to provide "for the just, speedy and inexpensive determination of every proceeding".

[53] See also *Meads v. Meads*, 2012 ABQB 571 where Rooke A.C.J. offers a comprehensive analysis of this phenomenon.

[54] Furthermore, nothing will prevent a previously proclaimed vexatious litigant from advancing legitimate future claims. They would simply be required to secure leave of the Court before doing so.

[55] Finally, the Court should consider, when appropriate, expanding the order to restrain not just the vexatious litigant but also his spokesperson, agent or associate (as recommended by Mr. Merrick and as provided for in s. 45B).

[56] Of course, it will be up to the individual judge to assess each case on its own facts in order to determine appropriate parameters of the proposed restraining order.

The Test for Granting Leave

[57] When should a previously declared vexatious litigant be granted leave to continue an existing action or to commence a new one? The basic test can be found in the legislation:

> 45D (1) A person against whom an order has been made under subsection (1) or (2) of Section 45B may make a motion for leave to start or continue a proceeding and, where a court is satisfied that the proceeding is not an abuse of process and is based on reasonable grounds, the court may grant leave on such terms as the court determines.

[58] So the burden will be on the vexatious litigant to establish that: (a) the proposed proceeding is not an abuse of process; and (b) it is based on reasonable grounds.

[59] In my view, care should be taken to ensure that such motions are handled as simply and efficiently as possible. For example, to determine whether the claim is abusive, the record should typically be limited to the pleadings. This would include the proposed new pleadings as well as this litigant's past pleadings. To determine whether the proposed proceeding is based on reasonable grounds, I would suggest that the record be limited to the proposed pleadings and that the "clearly unsustainable" test used for summary judgment on pleadings (Rule 13.03) be applied.

[60] Of course, the granting of leave should not diminish an opposing party's right to seek appropriate relief at any stage of the process, be it summary judgment under Rule 13 or abuse of process relief under Rule 88.

A Vexatious Litigant's Rights of Appeal

[61] A litigant has an expressed statutory right to appeal the issuance of a restraining order:

> 45C A person against whom an order has been made under subsection (1) or (2) of Section 45B by the Supreme Court or a judge of the Court of Appeal may appeal the order to the Court of Appeal. *2009, c. 17, s. 1.*

[62] This is an unfettered right of appeal to the full court. We, therefore, could not restrict it by, for example, requiring leave. Therefore, Mr. Tupper's appeal of Justice Scaravelli's s. 45B restraining order came to this Court as of right.

[63] However, that is not necessarily the case for previously proclaimed vexatious litigants who have been denied leave (to continue or commence a proceeding). They enjoy no such expressed unfettered right of appeal. Instead they would have to rely on the general right of appeal set out in our Judicature Act:

> 38 (1) Except where it is otherwise provided by any enactment, an appeal lies to the Court of Appeal from any decision, verdict, judgment or order of the Supreme Court or a judge thereof, whether in court or in chambers.

[64] Yet, as is evident from our granting of the Attorney General's motion in this matter, nothing would prevent this Court from relying on s. 45B to restrain a litigant from filing an appeal without leave. In summary, I can offer this guidance:

1. Litigants can appeal s. 45B restraining orders to our full Court, as of right.

2. For all other appeals, this Court can issue a restraining order requiring leave.
3. Without such a restraining order, previously proclaimed vexatious litigants can appeal a denial of leave (to continue or commence a proceeding).

DISPOSITION

[65] I would dismiss the appeal but, in the circumstances, without costs. I would further declare the appellant a vexatious litigant in this Court and prohibit him, his spokesperson, agent or associate from commencing further appeals in the Nova Scotia Court of Appeal, relating to the pleadings and allegations set forth in the proceedings identified under Hfx. No. 410543 and S.H. No. 255102 (now referenced as Hfx. No. 255102), without leave of the Court of Appeal, or a judge thereof.

MacDonald, C.J.N.S.

Concurred in:

Saunders, J.A.

Hamilton, J.A.

Beveridge, J.A.

Van den Eynden, J.A

APPENDIX

Judicature Act

45A In Sections 45B to 45E,

(a) "clerk of the court" means

(i) for the Supreme Court, the prothonotary,

(ii) for the Supreme Court (Family Division), a court officer, or

(iii) for the Court of Appeal, the Registrar;

(b) "court" means the Supreme Court or the Court of Appeal. *2009, c. 17, s. 1.*

1.1.1.1 Order against proceeding without leave

45B (1) Where a court is satisfied that a person has habitually, persistently and without reasonable grounds, started a vexatious proceeding or conducted a proceeding in a vexatious manner in the court, the court may make an order restraining the person from

(a) starting a further proceeding on the person's own behalf or on behalf of another person;

(b) continuing to conduct a proceeding,

without leave of the court.

(2) The court may make the order apply to a spokesperson or agent of a party or to any other person specified by the court who in the opinion of the court is associated with the person against whom the order is made.

(3) Notice of a motion for an order under subsection (1) or (2) must be given to the Minister of Justice and Attorney General, except when the Minister is a party to the proceeding in respect of which the motion is made.

(4) A motion for an order under subsection (1) or (2) may be made by the party against whom the vexatious litigation has been started or conducted, a clerk of the court or, with leave of the court, any other person.

(5) An order may not be made against counsel of record or a lawyer who substitutes for counsel of record. *2009, c. 17, s. 1.*

1.1.1.2 Appeal

45C A person against whom an order has been made under subsection (1) or (2) of Section 45B by the Supreme Court or a judge of the Court of Appeal may appeal the order to the Court of Appeal. *2009, c. 17, s. 1.*

1.1.1.3 Leave to start or continue proceeding

45D (1) A person against whom an order has been made under subsection (1) or (2) of Section 45B may make a motion for leave to start or continue a proceeding and, where a court is satisfied that the proceeding is not an abuse of process and is based on reasonable grounds, the court may grant leave on such terms as the court determines.

(2) A motion in a proceeding in the Court of Appeal for a restraining order under subsection (1) or (2) of Section 45B, or for an order for leave under subsection (1), may be made to a judge of the Court of Appeal.

(3) A court may make rules of court respecting granting leave, including a rule requiring the court to consider the frequency of motions made by or on behalf of the person making the motion for leave. *2009, c. 17, s. 1.*

1.1.1.4 Effect of Sections 45B to 45D

45E Nothing in Sections 45B to 45D limits the authority of a court to make an order in respect of an abuse of a process of the court, including an order for dismissal, a stay or indemnification or to strike a pleading. *2009, c. 17, s. 1.*

Civil Procedure Rules

88.01 (1) These Rules do not diminish the inherent authority of a judge to control an abuse of the court's processes.

(2) This Rule does not limit the varieties of conduct that may amount to an abuse or the remedies that may be provided in response to an abuse.

(3) This Rule provides procedure for controlling abuse.

88.02 (1) A judge who is satisfied that a process of the court is abused may provide a remedy that is likely to control the abuse, including any of the following:

(a) an order for dismissal or judgment;

(b) a permanent stay of a proceeding, or of the prosecution of a claim in a proceeding;

(c) a conditional stay of a proceeding, or of the prosecution of a claim in a proceeding;

(d) an order to indemnify each other party for losses resulting from the abuse;

(e) an order striking or amending a pleading;

(f) an order expunging an affidavit or other court document or requiring it to be sealed;

(g) an injunction preventing a party from taking a step in a proceeding, such as making a motion for a stated kind of order, without permission of a judge;

(h) any other injunction that tends to prevent further abuse.

88.02 (2) A person who wishes to make a motion under section 45B of the *Judicature Act* may do so by motion in an allegedly vexatious proceeding or a proceeding allegedly conducted in a vexatious manner, or by application if there is no such outstanding proceeding.