

NOVA SCOTIA COURT OF APPEAL

Citation: *A.P. v. Nova Scotia (Community Services)*, 2024 NSCA 4

Date: 20240105

Docket: CA 527799

Registry: Halifax

Between:

A.P.

Appellant

v.

The Minister of Community Services and C.B. and
A.P. and O.P. by their Guardian Ad Litem, Beth Archibald

Respondents

Restriction on Publication: s. 94(1) of the *Children and Family Services Act*

Judge: Farrar J.A.

Motion Heard: December 14, 2023, in Halifax, Nova Scotia in Chambers

Held: Motion granted

Counsel: A.P., appellant, on his own behalf
Caroline McInnes, Registrar
Shawn O’Hara, for the respondent Minister of Community
Services
Susan Young, on behalf of the Guardian Ad Litem
C.B., respondent, on her own behalf, not present

Prohibition on publication

94 (1) No person shall publish or make public information that has the effect of identifying a child who is a witness at or a participant in a hearing or the subject of a proceeding pursuant to this Act, or a parent or guardian, a foster parent or a relative of the child.

Decision:

Introduction

[1] On December 1, 2023, the Registrar of the Court of Appeal, Caroline McInnes, filed a motion seeking an Order declaring that A.P., the appellant in this proceeding, is conducting the appeal in a vexatious manner, and also seeking a remedy pursuant to s. 45B(1)(b) of the *Judicature Act*.

[2] On December 14, 2023, I heard the Registrar's motion and reserved my decision.

[3] For the reasons that follow, I would grant the Registrar's motion, declare A.P. to be a vexatious litigant, and preclude him from filing any new appeal without first seeking leave of a judge of the Court of Appeal.

[4] Pursuant to *Rule* 90.40(2), I would also dismiss the present appeal for failure of A.P. to comply with the filing of the Appeal Book and his factum in accordance with the direction of this Court.

Background

The Present Appeal

[5] A.I.P. and O.P. are the children of A.P. and C.B. They are the subjects of an ongoing proceeding under the *Children and Family Services Act (CFSA)* being heard in the Supreme Court (Family Division).

[6] The Minister started the *CFSA* proceeding by filing a Notice of Child Protection Application on December 14, 2022.

[7] On December 21, 2022, the children were found to be in need of protective services and placed in the care and custody of their mother, C.B., where they remain to date. An Interim Order was issued on January 10, 2023.

[8] A.P. has filed a number of appeals and motions from Orders made in the *CFSA* proceeding. Later in these reasons, I will address the other appeals and motions in more detail.

[9] On September 27, 2023, Justice MacKeigan completed the Disposition Hearing and made the finding that the children remained in need of protection pursuant to s. 22(2)(g) of the *CFSA* and ordered the children to remain in the care and custody of C.B., subject to the supervision of the Minister.

[10] The Supervision Order was issued on November 14, 2023 and is the subject matter of this appeal.

[11] There is a parallel proceeding in the Family Division, arising out of A.P. and C.B.'s divorce, where both parties are making variation applications with respect to custody of A.I.P. and O.P.

[12] The first Review Hearing in the *CFSA* matter and Case Management Conference/Pre-Trial in the *Divorce Act* variation matter was scheduled for December 20, 2023 at 3:00 p.m. before Justice Lloyd Berliner who now has taken carriage of the matter in the lower court. It appears from a review of the court file for December 20, 2023, the Supervision Order would be renewed but the order has not yet been taken out. A.P. filed a motion in this appeal on January 2, 2024 which appears to arise out of what occurred on December 20, 2023. I will say more about this motion later.

[13] On October 13, 2023, A.P. filed a Notice of Appeal of the Disposition Decision of September 27, 2023. An Amended Notice of Appeal was filed October 19, 2023.

[14] In the Amended Notice of Appeal, A.P. raises the following grounds of appeal:

1. ***The Judge erred in law by acting on this matter while in a conflict of interest.***
2. ***The Judge acted in a manner leading to a reasonable apprehension of bias.***
3. The Appellant was denied legal counsel in The Children and Family Services Act proceeding.
4. The Judge made errors in law that resulted in an injustice or miscarriage of justice.
5. ***The Judge lacked procedural fairness and breached natural law as a consequence of her stated conflict of interest.***
6. The Judge erred by misapprehending the evidence in the making of a disposition order.

7. The Judge's misapprehension of evidence played an essential role in the reasoning process resulting in the findings of disposition.
8. The Judge's participation yielded numerous violations under The Canadian Constitution Act, The Canadian Charter of Rights and Freedoms, and The Children and Family Services Act.
9. The Appellant was denied the right to full disclosure pursuant to s. 39 of The Children and Family Services Act and s. 7 of The Canadian Charter of Rights and Freedoms.
10. The Judge erred in law by denying the appellant's right to due process. [Emphasis added.]

[15] As will become apparent, some of the grounds of appeal are similar, if not identical, to the grounds of appeal in previous proceedings.

[16] On October 26, 2023, A.P. filed the following motions in this appeal, which were scheduled to be heard in chambers on November 2, 2023: motion for date and directions, supported by Certificate of Readiness partially compliant with *Civil Procedure Rule* 90.26; motion for relief of "technical" filing requirements; and motion for waiver of filing fees.

[17] On November 2, 2023, the Registrar filed a Notice of Motion to dismiss the appeal. On November 9, 2023, that motion was adjourned pending A.P.'s ongoing completion of filing and other directions provided by the Court.

[18] A.P. attended chambers on November 2, 2023. He advised the Court that he was unable to proceed with his appeal without the assistance of counsel. The chambers judge (Van den Eynden J.A.), asked A.P. if he intended to abandon his appeal and/or was requesting the Court to dismiss his appeal. A.P. did not answer the question and indicated he could not answer it without having counsel to assist him.

[19] The chambers judge asked A.P. additional questions relating to his appeal, including whether:

1. if the appeal was set down, would he comply with Court directions to file the Appeal Book and his factum;
2. he would be filing supporting materials respecting his motion to waive filing requirements and fees;

3. he would be proceeding with the other anticipated motions referenced in his Certificate of Readiness, including the motion for state funded counsel;
4. he applied to Nova Scotia Legal Aid for assistance with his appeal and the outcome of his application.

[20] A.P. did not answer the questions posed. Rather, he stated he was unable to answer the questions because the nature of the questions required the assistance of a lawyer and no lawyer has been provided to assist him.

[21] It was explained to A.P. that it was his responsibility to perfect his appeal and that the requirements would be familiar to him given his prior appeals before the Court.

[22] His motions were adjourned to November 9, 2023, and he was directed to file any additional motions he intended to file, as well as the required supporting materials, by November 6, 2023. He did not file any additional material by that date.

[23] On November 9, 2023, A.P.'s motion for date and directions was heard in chambers, and a date was set for the appeal. His Appeal Book was due December 18, 2023, his factum on January 3, 2024. The Minister's factum is due January 17, 2024. His other motions were adjourned to November 23, 2023 as A.P. had not filed the required supporting materials by the deadline set by the judge in chambers on November 2, 2023.

[24] On November 14, 2023, A.P. filed a motion for state funded counsel, also scheduled to be heard on November 23, 2023.

[25] On November 16, 2023, A.P. submitted two additional motions for filing: a motion for a stay and a motion for judicial review under the *Charter*. These motions were not filed by the Registrar, as no affidavits were filed in support.

[26] On the morning of November 23, 2023, A.P. sought to file two lengthy affidavits with the Court in support of his motions for relief from technical filing requirements and waiver of filing fees. These affidavits were not accepted for filing as they were out of time.

[27] On November 23, 2023, Justice Carole Beaton heard the motions. She dismissed, by oral judgment, A.P.'s motion for a wavier of filing fees and motion

for relief from “technical” filing requirements, as no supporting documents had been filed.

[28] A.P.’s motions for stay and judicial review under the *Charter*, to the extent they were ever before the Court, were also dismissed as no supporting documents have been filed. Orders were issued by Beaton J.A. on November 24, 2023, confirming these dismissals.

[29] Beaton J.A. granted A.P.’s request to adjourn his motion for state funded counsel. It was scheduled for chambers on December 14, 2023.

[30] I heard the motion for state funded counsel on December 14, 2023 and by Order dated December 15, 2023 dismissed it finding there was insufficient merit to the appeal to warrant the appointment of counsel.

[31] As noted earlier, on December 14, 2023, I also heard the Registrar’s motion to have A.P. declared a vexatious litigant.

[32] On January 2, 2024, A.P. filed a motion “to control an ongoing abuse of the legal process” by Shawn O’Hara, counsel for the Minister of Community Services. It is apparent from the motion and his letter filed in support of it that the legal process referred to is the *CFSA* proceeding and not this appeal.

[33] The motion appears to be a result of what occurred on December 20, 2023 before Justice Berliner. In the motion, he seeks: a stay of the *CFSA* proceeding; an indemnification for losses arising from the abuse; to overturn my decision of December 15, 2023 denying him legal counsel; an order striking the pleadings in the *CFSA* file; an order expunging the non-existent agency case plan and plan of care; and any other injunction to prevent further abuse.

[34] In a lengthy letter in support of the motion, A.P. complains about the manner in which the *CFSA* proceeding is being conducted.

[35] I need only refer to one paragraph of the letter to show that A.P. is looking for this Court to revisit all proceedings under the *CFSA* where he has been unsuccessful:

I respectfully request this court’s careful evaluation of the decisions of the lower court that must be squashed. Going forward, terminate the minister’s current application, non-existent case plan, and all reports relevant to me and my family from the record. The agency application itself is a distraction from the real issues

that have been left unaddressed, unmonitored and continue to escalate. It is time to act decisively and prioritize safety, stop endangering my children to [S.R.], and promptly address Shawn O’Hara’s intentional abuse of the legal process, which must be done in the best interest of the public and the justice system for our province.

[36] None of the relief sought by A.P. is available on a motion to this Court, and, as I am dismissing the appeal, it will not be scheduled for hearing.

[37] As of the date of writing this decision, A.P. has not filed his Appeal Book, due on December 18, 2023, or his factum, due on January 3, 2024.

Previous Appeals

[38] On November 30, 2023, the Registrar searched the database used by the Nova Scotia Court of Appeal for matters involving A.P.

[39] This search yielded five civil appeals filed in the Nova Scotia Court of Appeal by A.P. since January 2023, including the present appeal.

[40] The following is the information regarding the date the appeals were commenced, their registry numbers, and the named respondents in these additional four appeals:

Date Appeal Filed	Registry Number	Respondent(s)
January 4, 2023	CA 520241	Minister of Community Services, C.B., and A.P. and O.P. by their Guardian <i>Ad Litem</i> Beth Archibald
March 17, 2023	CA 522272	C.B.
May 31, 2023	CA 524168	Minister of Community Services, C.B., and A.P. and O.P. by their Guardian <i>Ad Litem</i> Beth Archibald
August 17, 2023	CA 526078	Minister of Community Services, C.B., and A.P. and O.P. by their Guardian <i>Ad Litem</i> Beth Archibald

[41] To put A.P.’s conduct in perspective, it is necessary to summarize each of these appeals.

CA 520241

[42] A.P. filed a Notice of Appeal (Child Protection) on January 4, 2023, and an Amended Notice of Appeal on February 3, 2023, appealing the decision of Justice MacKeigan and the Interim Order of January 10, 2023 finding the children were in need of protective services and placing them in the care of their mother.

[43] In his Amended Notice of Appeal, A.P. raised 27 grounds of appeal. I will not set out all of the grounds of appeal, but they include: that the judge lacked procedural fairness; was one-sided against him; and there was a reasonable apprehension of bias.

[44] The Appeal Book was originally scheduled to be filed on February 3, 2023 and the appellant's factum by February 10, 2023. Those dates were extended and A.P. was to file both the Appeal Book and his factum on March 8, 2023. He did not comply with those filing deadlines. Instead, on March 2, 2023, A.P. made a motion for state funded counsel and a motion to stay the interim orders. These motions were heard in chambers on March 9, 2023, and dismissed by oral judgment. An Order dismissing the motions was issued the same day.

[45] A.P. discontinued this appeal on March 17, 2023.

CA 522272

[46] A.P. filed a Notice of Appeal (General) from orders granted by Associate Chief Justice O'Neil in the Supreme Court (Family Division) allowing the respondent, C.B., to travel internationally with the children without his permission. A.P. filed a letter requesting that the Hague Convention on the Civil Aspects of International Child Abduction (the "Hague Convention") be applied to this appeal. The Registrar wrote to the parties on March 23, 2023 advising that the chambers judge had determined that the Hague Convention had no application to this appeal and that the Court's Practice Directive on Hague Convention Appeals did not apply.

[47] In A.P.'s Notice of Appeal, he raises ten grounds of appeal as follows:

1. The Judge erred in fact by issuing orders for this file 1201-069551 under the parenting and support act.
2. The Judge erred in law by issuing orders for this file 1201-069551 under the wrong legislation.
3. The Judge erred in fact by issuing written orders that do not match the verbal orders made in the proceeding on February 17, 2023.

4. The Judge erred in law by issuing written orders that do not match the verbal orders made in the proceeding on February 17, 2023.
5. ***The Judge lacked procedural fairness by issuing one-sided orders in favour of the respondent, C.B.***
6. The Judge did not follow the correct procedures when directing the scheduling office to set down the matter before him on February 17, 2023.
7. The Judge erred in law by refusing to make orders in accordance with the Open Court Principle.
8. ***The Judge displayed reasonable apprehension of bias by presiding over this matter as a conflict of interest to the file 1201-069551.***
9. The Judge failed to apply the proper legal tests to the current matter and when making the orders being appealed.
10. ***The Judge lacked procedural fairness by refusing to address issues raised by the appellant, in favour of the other party in this proceeding.***
[Emphasis added.]

[48] As in the present appeal involving Justice MacKeigan, A.P. raises the issue of procedural fairness and a reasonable apprehension of bias on the part of the judge.

[49] A.P. made a motion for date and directions, a motion for filing accommodations and indemnity from costs, and a motion for an expedited appeal, which were scheduled in telephone chambers on April 19, 2023. These motions were adjourned to May 3, 2023, as A.P. had not filed an affidavit in support of his motion and had not properly served C.B.

[50] On May 3, 2023, the motions were further adjourned to May 24, 2023, as the affidavits had not been served on C.B. in time.

[51] By written decision (*A.P. v. C.B.*, 2023 NSCA 40) and Order issued June 2, 2023, Bourgeois J.A. dismissed A.P.'s motions for filing accommodations and indemnity from costs. One basis for dismissing A.P.'s motions was his failure to establish his appeal was clearly meritorious (¶22).

[52] The motion for date and directions proceeded in chambers on June 4, 2023. Dates and filing directions were set by Order of Bourgeois J.A. issued June 15, 2023. A.P. was to file the Appeal Book and his factum by September 29, 2023. He filed neither.

[53] By Order issued November 8, 2023, the appeal was dismissed in accordance with *Civil Procedure Rule 90.40(2)* for failure to comply with the filing dates.

CA 524168

[54] In the *CFSA* proceeding, a pre-hearing conference prior to the Disposition Hearing was held May 15, 2023. At the pre-hearing conference, the court gave procedural directions with respect to the Disposition Hearing scheduled for June 6, 2023. The directions were summarized in a Conference Memorandum issued May 25, 2023.

[55] On May 31, 2023, A.P. filed a Notice of Appeal of the Conference Memorandum. A.P. also filed a Notice of Motion to Introduce Fresh Evidence, and a Notice of Motion for State Funded Counsel.

[56] In the Notice of Appeal, A.P. raised the following grounds of appeal, including the judge was in a conflict of interest and that there was a reasonable apprehension of bias:

1. The Judge made error in law by acting on this file as a conflict of interest.
2. The Judge made error in law by proceeding with the Children and Family Services Act proceeding after declaring herself as a conflict of interest.
3. The Judge displays reasonable apprehension of bias by presiding over this case and denying my requests for accommodations.
4. The Judge violated my constitutional rights under the Canadian Charter of Rights and Freedoms and is preventing me from participating fairly and equally in this proceeding.
5. The Judge is misinterpreting the facts of this case.

[57] On June 1, 2023, A.P. made a motion for stay and for judicial review. These motions were heard on June 8, 2023 and dismissed on June 28, 2023 by Decision (2023 NSCA 46) and Order of Justice Bourgeois.

[58] In dismissing the motion for judicial review, Justice Bourgeois refers to the appellant raising matters that this Court had no ability to address:

[14] In his affidavit, the appellant raises concerns with how judges of the Supreme Court of Nova Scotia (Family Division) have been dealing with the child protection and divorce files involving his family. He asks this Court to “conduct a full judicial review of the lower court files *CFSA 128206* and *1201*.... prior to the hearing of the appeal”.

[15] As a judge in chambers, I have no authority to grant the order being sought, and as such, I dismiss the motion. To my knowledge, there is no ability for a panel of this Court to grant the relief being sought by the appellant, and would encourage him to seek advice in that regard.

[59] Also on June 1, 2023, A.P. made a motion for state funded counsel, which was heard in chambers on August 17, 2023. Justice Van den Eynden dismissed this motion in an oral decision given that day.

[60] On October 19, 2023, the appeal of the Conference Memorandum was heard by the Court. On October 30, 2023, the appeal was dismissed with written reasons (*A.P. v. Nova Scotia (Minister of Community Services)*, 2023 NSCA 75). In the decision, the Court concluded:

[36] *It is apparent from their oral and written arguments, as well as their interactions with the Court, J.S. and A.P. have a fundamental misunderstanding about the role of this Court. The only issue in this appeal was the Conference Memorandum. Any events which occurred before or after that Conference Memorandum are not the subject matter of this appeal.* The sole issue on this appeal, and one which was not addressed by the appellant, was whether Justice MacKeigan made an error of law or whether an injustice would result from her issuance of the Conference Memorandum. A.P. has wasted his own resources, the resources of the Minister, and those of this Court in proceeding in the manner in which he did.

[37] *A.P.'s arguments are entirely without merit and the appeal is dismissed.*

[38] As this is a *CFSA* matter, it would be a rare circumstance to order costs against an appellant parent. However, A.P. is coming very close to having costs awarded against him should he persist in filing appeals which have no merit or which may be moot. [Emphasis added.]

[61] In that decision, the Court also specifically addressed A.P.'s grounds of appeal that Justice MacKeigan was biased or in a conflict of interest and dismissed them.

CA 526078

[62] On August 17, 2023, A.P. filed a motion for an extension of time to file a Notice of Appeal (Child Protection) of a Protection Order made in the Supreme Court (Family Division).

[63] This motion was heard in chambers on August 24, 2023, and dismissed by Beaton J.A. by oral judgment the same day. An Order dismissing the motion was issued September 21, 2023.

[64] It is with this backdrop that I will now turn to address the Registrar's motion.

Issue: Should a vexatious litigant order be issued against A.P. pursuant to s. 45B of the *Judicature Act*?

Analysis

[65] Section 45B of the *Judicature Act*, R.S.N.S. 1989, c. 240, provides:

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. [Emphasis added.]

[66] Section 45A defines "court" as including the Court of Appeal:

(b) “court” means the Supreme Court or the Court of Appeal.

[67] Section 45D(2) allows a single judge of this Court to make a vexatious litigant order:

(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.

[68] The *Civil Procedure Rules* describe 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.

[69] In *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92, Chief Justice Michael MacDonald, writing for a five member Court, outlined the basic principles when considering s. 45B motions as follows:

[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.

[...]

[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.

[...]

[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.

[70] It is with these principles in mind that I will consider the Registrar's motion.

[71] Vexatious is not defined in s. 45B, however courts have provided examples of behaviours which if engaged in persistently by a litigant may merit the title of vexatious litigant.

[72] *Re Lang Michener and Fabian* (1987), 59 O.R. (2d) 353 (H.C.J.) is a seminal case on vexatious litigant orders. In making a vexatious litigant order, Henry J. reviewed the case law and produced the following list of characteristics of vexatious proceedings for the purpose of s. 140 of the *Courts of Justice Act*, (which is effectively identical to s. 45B of the *Judicature Act*):

From these decisions the following principles may be extracted:

- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
- (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;
- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;

- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious;
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

[73] Other conduct has been identified which may give rise to a vexatious litigant order:

- Seeking a remedy that the court does not have power to grant;¹
- Seeking a remedy that the litigant does not have status to pursue;²
- Raising grounds that could have been raised in a previous proceeding;³
- Bringing proceedings to delay another proceeding.⁴
- “Instituting but never pursuing” proceedings.⁵
- Filing proceedings with “extreme and unsubstantiated allegations”.⁶
- Engaging in inappropriate courtroom behaviour, such as being disrespectful to the court, failing to observe rulings and directions from the presiding judge or engaging in unnecessarily protracted submissions.⁷

[74] Although *Re Lang Michener and Fabian* is an older case, it has withstood the test of time. Recently in *Green v. University of Winnipeg*, 2018 MBCA 137, [Green] the Manitoba Court of Appeal notes that over thirty appellate decisions across Canada and 250 lower court decisions have cited *Lang Michener* with approval (¶30). See also *Green v. Nova Scotia Department of Community Services*, 2023 NSSC 156.

[75] *Green* also summarized the characteristics of a vexatious litigant as follows:

¹ *Foy v. Foy (No 2)* (1979), 26 OR (2d) 220, at para. 2.

² *Ibid* at para. 28.

³ *Ibid* at para. 28.

⁴ *Mascan Corp v. French* (1988), 64 OR (2d) 1 at para. 16.

⁵ *E.Y. v. Canada*, [1995] FCJ No 1395 at para. 19.

⁶ *Ibid* at para. 19.

⁷ Law Reform Commission, 2006 Report on Vexatious Litigants (Law Reform Commission of Nova Scotia: Vexatious litigants, 2006) at para. 23.

[32] In short, “[t]he essential vice of habitual and persistent litigation is keeping on and on litigating when earlier litigation has been unsuccessful and when on any rational and objective assessment the time has come to stop” (*Attorney General v Barker*, [2000] EWHC 453 (BAILII) at para 22 (Admin); see also *PAFL v OL*, 2002 MBQB 44 at para 16).

[76] *Wang v. Strata Plan LMS 2970*, 2022 BCCA 56 bears some similar characteristics to A.P.’s conduct. In that case, the appellant raised arguments that were found to be meritless in previous appeals. Ms. Wang had been warned by the court that there would be consequences for doing so. Despite that she continued:

[25] Despite the decisions informing her that this argument cannot succeed, the appellant raised it again at the hearing of the application today. She indicated that she did not understand why she cannot rely on s. 167(2), and affirmed her belief that she should not have to pay the costs ordered against her.

[26] The appellant has been cautioned about the vexatious nature of her actions in this Court on three occasions. The first such caution was given in CA45143. Justice Hunter, sitting in chambers, noted that, “Ms. Wang has been relentless in her pursuit of the strata corporation and Chao Wang. She has been unsuccessful at every step of the way, and continues to bring frivolous arguments on the costs application that have been previously dismissed by this Court”: 2021 BCCA 277 at para. 40.

[77] Similarly, in this case, A.P. has been warned about the meritless nature of his appeals, the necessity for him to abide by Court orders and directions, and the limited jurisdiction of an appellate court. He has ignored all directions and advice of the Court and simply continues with filing meritless appeals and motions.

[78] The following are what I consider to be the conduct of A.P. which leads to no other conclusion but that this is one of the clearest of cases where a vexatious litigant order should issue to prevent ongoing abuse:

1. He has appealed virtually every decision made in the court below and raises the same or similar grounds of appeal in every proceeding.
2. He has filed similar motions in all of the appeals (for example: state funded counsel; relief from technical filing requirements; motions for stays; motions for judicial review; and waiver of filing fees), all of which were unsuccessful, yet he continues to make them.
3. He continues to appeal matters that have already been decided by this Court, in particular, his assertions that the *CFSA* judge has a conflict of interest and there was a reasonable apprehension of bias.

4. He has failed to comply with Court orders for filings.
5. Through his agent, he made lengthy submissions on appeal CA 524168 which were not the subject matter of appeal and asked for relief for which this Court had no jurisdiction to grant.
6. Every appeal he has launched has either been dismissed or discontinued. None of the appeals had any merit.
7. He has been disrespectful to the Court in failing to respond to questions from the judges.
8. He has made protracted, irrelevant oral submissions in support of unmeritorious motions.
9. He has failed to take direction from the Court as to the proper role of the Court of Appeal and has ignored the admonishment that the Court made in *A.P. v. Nova Scotia (Minister of Community Services)*, *supra*.
10. His most recent filing of a motion in this Court on January 2, 2024 on matters over which this Court has no jurisdiction is a textbook example of the vexatious nature of his filings. The motion and his letter to the Court in support of the motion are just further attempts to weaponize the legal proceedings for improper purposes. He makes unfounded allegations against Mr. O’Hara, seeks remedies that are not available and, again, raises concerns about the conduct of the *CFSA* proceeding which Bourgeois J.A. already decided were not properly before this Court.

[79] Though not decided in the circumstances of a vexatious litigant order, the comments of Saunders J.A. in *Doncaster v. Chignecto-Central Regional School Board*, 2013 NSCA 59 are applicable to A.P.:

[44] In light of Justice Coady’s findings in the court below and from what I have seen on this and other matters on our Court’s docket, *it seems to me that litigants such as Mr. Doncaster appear to fall into a camp of persons who claim an unconditional, and unassailable “right to appeal” every step, in every case. Persons who hold such a view are seriously misguided or ill-informed. No right is absolute.* In our free and democratic society every right, privilege or interest is balanced and held in check by other rights, privileges and interests. The opportunity to appeal is regulated by long held practices and rules, by which deadlines, substance, style and content are strictly enforced. Those unwilling or unprepared to follow those strictures do so at their peril.

[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.
[Emphasis added.]

[80] I would place A.P. in the same category of litigant. Being self-represented does not inoculate the appellant from the Court's processes. In my view, A.P. has filed appeals "habitually, persistently and without reasonable grounds" as set out in s. 45B. He attempts to relitigate issues that have already been decided or which are irrelevant. Whatever may be A.P.'s agenda on these appeals, it has nothing to do with the merits of the decisions below.

[81] As MacDonald C.J. said in *Tupper*, courts cannot accommodate to the point of tolerating abuse (¶48). A.P.'s actions exhibit a pattern of abuse that demonstrates a blatant disregard or contempt for the court processes.

[82] As a result, A.P. will not be permitted to commence any further appeals in the Court of Appeal without seeking leave of the Court of Appeal or a single judge thereof.

[83] Section 45D sets out the process which he is required to follow should he wish to appeal any further orders to this Court:

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.

[84] I would also dismiss the present appeal under *Rule* 90(2) as A.P. has failed to comply with the filing requirements.

Farrar J.A.