NOVA SCOTIA COURT OF APPEAL
Citation: *Liu v. Atlantic Composites Ltd.*, 2014 NSCA 58

Date: 20140604
Docket: CA 417703
Registry: Halifax

Between:

Guo Yi Liu

Appellant

v.

Atlantic Composites Limited

Respondent

Docket: CA 421324

Guo Yi Liu

Appellant

v.

Atlantic Composites Limited

Respondent

Judges:	Saunders, Farrar and Scanlan, JJ.A.
Appeal Heard:	May 26, 2014, in Halifax, Nova Scotia
Held:	Appeals dismissed per reasons for judgment of Saunders, J.A.; Farrar and Scanlan, JJ.A. concurring.
Counsel:	Appellant not appearing Jack Graham, Q.C. and Michael Murphy, for the respondent

Reasons for judgment:

[1] A full day's hearing was scheduled for Monday, May 26, 2014 to deal with the appellant's two appeals (CA 417703 and CA 421324), the particulars of which I will describe in more detail later in these reasons. Mr. Liu did not appear to present his appeals. In previous correspondence with the Registrar's office he had made it clear that he had no intention of attending and did not wish to be bothered by any further communications from the Court.

[2] Late in the day on Friday, May 23, Mr. Liu emailed to the Deputy Registrar two "documents" which he asked to be read out loud at the hearing. The first was said to be a transcript of the proceedings before Nova Scotia Supreme Court Justice Kevin Coady on October 15, 2013 where he dismissed Mr. Liu's motion for summary judgment. The second was a four page typed letter to the Deputy Registrar that Mr. Liu labelled:

> "The Dying Victim, the Appellant's last statement to Nova Scotia Court of Appeal – CA 417703 and CA 421324"

After being advised that counsel for the respondent had not been copied with these documents, we gave Mr. Graham time to review the material. Having done so Mr. Graham said he objected to their admissibility because they were filed late, did not comply with the **Rules** and were irrelevant to the issues under consideration on appeal. We took Mr. Graham's submission under advisement. We said we would mark Mr. Liu's materials as exhibits merely for the purposes of identification, but would reserve on their admissibility and the weight, if any, to be attached to them, until our deliberations concerning the merits of Mr. Liu's appeals and the respondent's motion.

[3] The respondent then moved for an order dismissing the appeals pursuant to Civil Procedure Rule 90.44. After considering Mr. Graham's able submissions we recessed and then returned to court to announce our unanimous decision that the respondent's motion was allowed, with costs on a solicitor-client basis, and reasons to follow. These are our reasons.

[4] Let me deal first with the respondent's objection to the materials emailed to the Deputy Registrar on May 23rd. I agree with the respondent's submission. Quite apart from the contemptuous and likely libelous nature of Mr. Liu's

arguments, they are late, not in compliance with the **Rules**, irrelevant to the issues on appeal, and form no part of our deliberations except to the extent I choose to illustrate the appellant's vicious personal attacks on other people.

[5] At the hearing Mr. Graham confirmed that the two appeals have never been consolidated but rather were ordered to be heard at the same time. Given the similarity in circumstances surrounding both appeals, as well as the relief claimed by the respondent, I propose to deal with both appeals in a single decision and I have combined both CA references in the style of cause. In other words, this single decision will dispose of both appeals and a single order will issue to grant the respondent's motion dismissing both appeals with costs to the respondent on a solicitor-client basis.

[6] Too much time and paper have already been wasted describing the detritus of Mr. Liu's ill-advised forays into worthless litigation. The record here is replete with examples of conduct, words and actions that would be seen by any reasonable observer to be scandalous, frivolous, vexatious, and a clear abuse of process.

[7] The appellant's many misadventures have been thoroughly chronicled by a host of experienced jurists and I do not intend to repeat in these reasons what they have already made plain, except to provide context and ground the reasons for our decision.

Background

[8] What started as a simple claim for benefits to the Workers' Compensation Board following a workplace incident in February 2011 has ballooned out of control into a cascade of motions, appearances, hearings, appeals, and lawsuits attacking a slew of court staff; public officials; lawyers; the Attorney General of Nova Scotia; (and at last count) three Justices of the Nova Scotia Supreme Court; three Justices of the Nova Scotia Court of Appeal, and three Justices of the Supreme Court of Canada wherein damages exceeding $500M (sic) are claimed for a host of transgressions said to include "perjury", "misleading and obstructed justice ", "negligence", "discrimination", "cover-up scandal", "threatening his life and attempting murdering", "committed judicial negligence", "discrimination and injustice", "upheld ... false evidences or perjury", and "unduly obstructed justice, blocked his access to his disability benefit", and "published perjury, libeled and defamed the Plaintiff ... and ruined his reputation and career".

[9] In the letter he asked to be "read out" at the hearing Mr. Liu described Justices Farrar, Coady and Moir as well as Messrs. Graham and Murphy and their corporate client as "criminal suspects" and "murderers" alleging that each or all were guilty of "outrageous crime", "perjury", "obstruction of justice", "discrimination", "defamation" and other violations of Canada's criminal laws and Constitution.

[10] This litany of baseless allegations is documented in the 2-volume affidavit filed by Mr. Michael Murphy, of counsel for the respondent sworn March 12, 2014, in support of the respondent's motion to dismiss the appellant's appeals. In addition a chronicle of the unnecessary, expensive and time consuming proceedings precipitated by Mr. Liu are thoroughly canvassed by my colleague Justice David P.S. Farrar in his decision dated March 19, 2014 (2014 NSCA 27) wherein he ordered Mr. Liu to post security for costs in the amount of $15,000 on or before April 14, 2014, failing which the respondent would be entitled to move for dismissal. I accept the facts as outlined in Justice Farrar's decision together with the facts contained in Mr. Murphy's 2-volume affidavit and incorporate them by reference as forming part of this decision.

[11] As noted earlier, the respondent's motion concerns two appeals. I will deal with them chronologically.

CA 417703

[12] Mr. Liu sued his employer for wrongful dismissal. Pleadings were exchanged. Mr. Liu brought a motion for summary judgment on the evidence. The respondent sought an adjournment to permit the filing of affidavits and documentation thought necessary to deal appropriately with the summary judgment motion. The appellant refused to consent to the adjournment. There then ensued a volley of correspondence from the appellant to the Court which included Mr. Liu accusing Supreme Court Justice Gerald R.P. Moir of abuse of power. On June 25, 2013, Moir, J. granted an adjournment of the summary judgment motion which was to have been heard July 2, 2013. The next earliest available dates of October 15 and 16, 2013, were assigned to hear the motion. On July 16, 2013, the appellant filed an appeal from the interlocutory decision of Moir, J.

[13] The matter then came before Justice Peter M.S. Bryson of this Court in Chambers as a motion for date and directions. He declined to set the appeal down for a hearing or give filing dates because the summary judgment motion was

scheduled to be heard in the Nova Scotia Supreme Court on October 15-16, 2013, and Mr. Liu's appeal of that interlocutory order to this Court could not possibly be heard before that date.

CA 421324

[14] Nova Scotia Supreme Court Justice Kevin Coady heard Mr. Liu's summary judgment motion on October 15, 2013, and dismissed it. The motions judge found that practically every material fact was in dispute. Mr. Liu appealed that decision. Upon application to this Court in Chambers both appeals were set down to be heard together but with separate appeal books and facta to be filed in each one.

[15] Mr. Liu never perfected his appeal. He never filed his appeal books or facta. Neither has he paid the security for costs in the amount of $15,000 ordered by Farrar, J.A.

Analysis

[16] With this by way of background I turn now to the merits of the respondent's motion asking us to dismiss the appellant's appeals pursuant to Civil Procedure Rule 90.44 with costs on a solicitor-client basis.

[17] In this I can do no better than endorse and repeat what Messrs. Graham and Murphy have set out in their excellent factum on behalf of the respondent. In my respectful opinion their submissions reflect a proper statement of the law and the facts. Their arguments and claims for relief are entirely justified in these circumstances. The underlining for emphasis appears in their factum.

> 65. The type of behaviour exhibited by the Appellant in this case has been recently discussed by this Court in **Doncaster v. Chignecto-Central Regional School Board**, 2013 NSCA 59 ["*Doncaster*"]{Authorities, Tab 6]. There, the Court was asked to grant a request for a stay, and to require the appellant to post security for costs. In granting the respondent's request, the Court stated the following:
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> > [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.
>
> [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".
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> [Emphasis added]

66. In the subsequent case of **Leigh v. Belfast Mini-Mills Ltd.**, 2013 NSCA 86 ["*Belfast Mini*-Mills"][Authorities, Tab 7] which also concerned a security for costs motion brought against a self-represented litigant who refused to respect the Court's procedures, the Court stated the following:

> [20] ...The appellants have pursued frivolous and futile motions, applications, and appeals, none of which have been successful. They refuse to accept court rulings on various issues and simply appeal each and every decision. Communication has been conducted by them in such a way as to complicate and prolong litigation. Justice Duncan commented unfavourably on the appellants' conduct in this action and their attitude toward the respondents in Leigh v. Belfast Mini-Mills Ltd., 2011 NSSC 320:
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> > [24] Substantial parts of their submission are assaults on the integrity of counsel for the defendants. The plaintiffs raise the same allegations that they advanced in support of the failed motion for an abuse of process. They continue to insist that the defendants accessed "sealed" and "confidential" documents; that counsel breached the implied undertaking rule; that defendants' counsel have not been "forthright", having committed "perjury" and actively misrepresented information to the court. They suggest the motive is to cause "harm and delay" and to "crush" the plaintiffs into submission. The ongoing personalized attacks on counsel for the defendants are unwarranted and reprehensible.
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> ...
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> [22] Ms. Leigh and Ms. Cummings are not unlike Mr. Doncaster who was recently commented upon by Saunders, J.A ...
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> [23] I would place the appellants in this case in that category of litigant. Being self-represented does not inoculate the appellants from the courts' processes. The appellants have no respect for court orders, have thumbed their noses at the request by the respondents to pay costs, failed to attend at a discovery and, in general, have conducted this litigation in a frivolous and vexatious manner. I pause here to comment that on my review of the record and the submissions of the parties there is absolutely no merit to the allegations of improper conduct on the part of Mr. Dickson in any of the proceedings. The appellants continued assertions that Mr. Dickson is acting inappropriately further highlights their lack of respect and understanding of the court's processes.
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> [Emphasis added]

67. In light of the recent decisions of this Honourable Court, the Respondent submits that the history of the proceedings in this Court and the Court below demonstrate that the Appellant has acted in a manner that is vexatious or abusive. Whenever the Respondent has made a reasonable request of the Appellant, such as setting dates for the submission of Motion materials to the Court, or requesting the delivery of his Affidavit Disclosing Documents, the Appellant often refuses to respond, and when he does eventually respond, his letters are filled with

offensive, meritless accusations that attempt to call into question the integrity not only of the Respondent, but also of the Respondent's counsel, as well as members of the Judiciary. This behaviour was referred to by Justice Moir as abusive, and an abuse of process. The Respondent's actions in this regard further waste valuable Court resources by forcing the respondent to file Motions that would be unnecessary were the Appellant to conduct himself in a reasonable and respectful manner.

68. Like the vexatious litigant in *Doncaster, supra*, the Appellant also consistently makes spurious and unsustainable claims, as evidenced by the lower court's response to his Summary Judgment Motion to Strike. However unsustainable these claims may be, the Respondent has been obligated to respond in each and every case.

69. In addition to being highly uncooperative, the Appellant has also failed to abide by various deadlines set by the Court for the filing of notices and materials, which further demonstrates his complete lack of respect for the Court's procedures. He has also, on two separate occasions (for both the Adjournment Motion and the Summary Judgement Motion), filed Notices of Cross-examination in instances where there was clearly nothing to gain from cross-examination. Moreover, the Appellant repeatedly requires the assistance of Court staff, and rarely does he file a document with the Court that he does not subsequently amend and re-file. This behaviour further taxes the Court's resources, and, the Respondent submits, creates delays that may impact more deserving litigants. Recently, he has taken to insulting Court staff, accusing them of inappropriate conduct and obstruction of justice, in complete disregard for the extensive efforts staff members have made to assist the Appellant.

70. Fifth, the Respondent notes that the Appellant has failed to pay the costs of unsuccessful proceedings, which is another factor to be considered in determining whether proceedings are "vexatious". Like the litigants in *Belfast Mini-Mills, supra* and *Doncaster, supra*, costs have been awarded against the Appellant on three separate occasions, and the Appellant has expressly stated that he has no intention whatsoever of paying them. As noted above, when asked to pay these costs, he has responded by accusing the Respondent's counsel of making a threat against his life, and clearly has no intention of paying the costs. While this matter is relatively straightforward, the costs of this litigation have thus far been extremely high, and in the circumstances, there would appear to be, as was the case in *Doncaster, supra*, "no end in sight."

71. Lastly, the Respondent's conduct in "persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings." Although the Appellant's appeals have not yet been heard, he has consistently and unsuccessfully asked judges of this Court, the Supreme Court of Canada, and the Court below to reconsider their decisions. As set out above, whenever the Appellant is unsuccessful (and he has been unsuccessful in every Motion and Appeal thus far pursued in this matter), he will typically first write a

letter to the Court, and to the judge who decided the issue, asking that the issue be reconsidered. In doing so, he essentially re-argues all of the points already raised in his original submissions. On separate occasions, the Nova Scotia Supreme Court, the Nova Scotia Court of Appeal, and the Supreme Court of Canada have all been obligated to respond to the Appellant's requests by refusing to reconsider the impugned decisions. At that point, the Appellant has then typically filed a Notice of Application for Leave to Appeal, regardless of his limited non-existent chances of success.

72. It is the Respondent's position that, given all of the above, this Court should find that the present Appeal is vexatious, frivolous, and without merit, and is absolutely unsustainable. Furthermore, the Respondent notes that even if the appeal itself had merit, which we submit it does not, then the Appeal should be dismissed on the basis that the Appellant has unduly delayed perfecting the appeal by not filing either his appeal book or factum on time. We submit that these are not "minor slips" (see **Macdonald v. First National GP Corporation**, 2013 NSCA 60 at para. 35 ["*Macdonald*"][Authorities, Tab 8]. Rather, as noted above, the Appellant appears to have no intention of filing any further documents with the Court, and indeed no longer wishes to communicate with either the Respondent or the Court. This Court has noted in **Ofume v. CIBC**, 2003 NSCA 77 at para. 4 ["*Ofume #2*"][Authorities, Tab 9] that interlocutory appeals must be prosecuted promptly. Moreover, although decided pursuant to Rule 90.40(2), **R. v. Liberatore**, 2010 NSCA 26 ["Liberatore"][Authorities, Tab 10] stands for the proposition that it is reasonable for the Court to dismiss an appeal where filing deadlines are missed, particularly if this results in hearing dates having to be rescheduled. Given the undue and unreasonable delay caused by the Appellant in perfecting this appeal, the Respondent submits that the appeal should be dismissed.

73. The Respondent respectfully submits that it is no excuse to say that the Appellant is self-represented, and therefore deserving of greater leniency. Undoubtedly a self-represented litigant is not expected to conduct a proceeding with the procedural efficiency of trained legal counsel. The Appellant's conduct, however, has gone far beyond procedural inefficiency, and that conduct is not to be excused by virtue of his self-representation. Such conduct was not excused in ***Belfast Mini-Mills, supra*** or in ***Doncaster, supra***, and nor should it be excused here.

RELIEF SOUGHT

74. The Respondent requests that the Court grant its Motion to Dismiss. The Respondent further requests that the costs of this Motion be awarded against the Appellant on a solicitor and client basis, payable forthwith.

75. The Respondent submits that this is an appropriate case for an award of solicitor-client costs. The Civil Procedure Rules provide the discretion to make this award:

> **77.01**(1) The court deals with each of the following kinds of costs:
>
> **...**
>
> (b) solicitor and client costs, which may be awarded in exceptional circumstances to compensate a party fully for the expenses of litigation.
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> **77.03**(2) A judge may order a party to pay solicitor and client costs to another party in exceptional circumstances recognized by law.

76. The principles of solicitor-client costs are settled and well-expressed in **Smith's Field Manor Development Ltd. v. Campbell**, 2001 NSSC 44 [Smith's Field][Authorities, Tab 11]. Though lengthy, Justice Hood's comments are worthy of reproduction:

> [479] It is not disputed that solicitor-client cost awards are made only in rare and exceptional circumstances. In *Coughlan et al. v. Westminer Canada Limited, et al* (1994), 127 N.S.R. (2d) 241, the Court of Appeal upheld the decision of Nunn, J., the trial judge, [1993] N.S.J. No. 129, with respect to costs. The Court of Appeal quoted from his decision at para. 170:
>
> The plaintiffs in each of these actions are entitled to recover costs and on a solicitor client basis. The character of the allegations involved here, fraud and dishonesty, and the circumstances here of the length of time of the outstanding allegations, their national publicity, the length and extent of the pre-trial processes and the trial itself, the findings I have made regarding injury to reputations and the lack of any real proof of fraud or dishonesty all contribute to making this a proper situation to award costs on a solicitor client basis as, in my opinion, this does constitute one of those 'rare and exceptional' cases wherein such awards are, and should, be made.
>
> [480] In The Law of Costs, Orkin, 2nd Edition, the authors say at pp. 2-144-146:
>
> An award of costs on the solicitor-and-client scale, it has been said, is ordered only in rare and exceptional circumstances to mark the court's disapproval of the conduct of a party in the litigation. The principle guiding the decision to award solicitor-and-client costs has been enunciated thus:
>
> [S]olicitor-and-client costs should not be awarded unless there is some form of reprehensible conduct, either in the circumstances giving rise to the cause of action, or in the proceedings, which make such costs desirable as a form of chastisement.

> The Supreme Court of Canada has approved the following statement of principle:
>
> Solicitor-and-client costs are generally awarded only where there has been reprehensible, scandalous or outrageous conduct on the part of one of the parties.
>
> ...
>
> At the same time, it has been said that an award of solicitor-and-client costs is not reserved for cases where the court wishes to show his disapproval of oppressive or contumelious conduct.
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> There is, as well, a factor frequently underlying such an award, although not necessarily expressed, namely, that the circumstances of the case may be such that the successful party ought not to be put to any expense for costs.... As well, an award of costs on the solicitor-and-client scale is an important device that the courts may use to discourage harassment of another party by the pursuit of fruitless litigation.
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> ...
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> [484] In Orkin, the author says at para 219 beginning at p. 2-146:
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> The exercise of discretion must be based on relevant factors, for example, the conduct of the litigation, and not on otherwise unrelated conduct. Orders of this kind have been made where a litigant's conduct has been particularly blameworthy, for example, where there were allegations of criminality, arson; fraud or impropriety either unproven or abandoned at trial; particularly when the allegations are made against professional persons carrying out their professional duties; .... Solicitor-and-client costs were awarded where a party brought wanton and scandalous charges; or allegations of perjury; ... or dishonesty; ... or deceit, conspiracy and breach of fiduciary duty; ....
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> [Emphasis added]
>
> 77. As noted by this Court in **Turner-Lienaux v. Campbell**, 2004 NSCA 41 ["*Turner*"], "[p]resumably if the Appeal Court panel thought the appeal was a complete waste of time or was frivolous or vexatious, it would order solicitor-client costs on the interlocutory appeal." The Respondent submits that, given the vexatious and meritless nature of the present appeal, this is an appropriate case in which to order solicitor and client costs.

[18] After carefully considering the record, there can be no doubt that each appeal is entirely without merit and should be dismissed on that basis alone. The errors Mr. Liu alleges on the part of Justice Coady in CA 421324 find no support in the record and are absolutely unsustainable. So too his complaint with respect to

the decision of Justice Moir. Moir, J. did nothing more than permit an adjournment so that Mr. Liu's motion for summary judgment could appropriately be heard on its merits. Coady, J. did just that. He carefully considered the motion and then dismissed it on the basis that virtually all of the material facts were in dispute and so the claim for benefits and damages could not be decided summarily. Justice Coady's decision rendered Moir, J.'s earlier order, moot.

[19] Even if either appeal had merit, I would order that they be dismissed on the basis that each is vexatious and an abuse of process (CPR 90.44(1)(a)) and also because the appellant failed to perfect the appeals (CPR 90.44(1)(b)) after being given every opportunity to do so. By his conduct, Mr. Liu has demonstrated a flagrant and repeated unwillingness to abide by the orders of this Court. This includes a clear pattern of behaviour in not satisfying filing deadlines or directions with respect to content; not honouring costs orders; making entirely unfounded, abusive and contemptuous allegations against staff, lawyers and judges; finally culminating in his refusal to participate in proceedings he himself had initiated.

[20] It may be that the person who writes such words as appear throughout this record is in need of help – in which case I would hope the appropriate intervention would be quick, tactful and effective. Be that as it may, such disgraceful and venomous language has no place in Canada's hallways of justice. Mr. Liu has revealed himself to be someone who lashes out at practically every individual whom he perceives to have found against him. He imagines a conspiracy at every level. He initiates proceedings in a variety of courts and, when shut down in one, tries to switch the venue or gain entry to another.

[21] I agree with Mr. Graham's submissions that no litigant in Nova Scotia should ever be victimized by such groundless and abusive personal attacks, and then be forced, with paltry recourse, to retain counsel at considerable expense to defend itself against such spurious claims. Mr. Liu's scandalous allegations against court staff, public officials, lawyers, and judges demonstrate unequivocally that he has no respect for the Court or its process. As was said in **Doncaster**:

> [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.

[22] The deliberate and repeatedly reprehensible conduct of the appellant in this case requires this Court's swift and unequivocal condemnation, and entitles the respondent to costs on a solicitor-client basis.

Conclusion

[23] For all of these reasons the respondent's motion to dismiss the appellants' appeals pursuant to Civil Procedure Rule 90.44 is allowed and the appeals are dismissed. The respondent is awarded its costs on a solicitor-client basis.

Saunders, J.A.

Concurred in:

Farrar, J.A.

Scanlan, J.A.