



**IN THE COURT OF APPEAL  
OF NEWFOUNDLAND AND LABRADOR**

**Citation:** *Oleynik v. Memorial University of Newfoundland*,  
2025 NLCA 22

**Date:** June 3, 2025

**Docket Number:** 202401H0025

**BETWEEN:**

ANTON OLEYNIK

APPLICANT/APPELLANT

**AND:**

MEMORIAL UNIVERSITY OF  
NEWFOUNDLAND

FIRST RESPONDENT

**AND:**

MICHAEL HARVEY, in his capacity as  
THE INFORMATION AND PRIVACY  
COMMISSIONER OF NEWFOUNDLAND  
AND LABRADOR

SECOND RESPONDENT

**Coram:** L.R. Hoegg, W.H. Goodridge and K.J. O'Brien JJ.A.

**Court Appealed From:**

Supreme Court of Newfoundland and Labrador,  
General Division 202101G4960  
(2024 NLSC 42)

**Appeal Heard:**

September 24, 2024

**Judgment Rendered:**

June 3, 2025

<b>Reasons for Judgment by:</b>	L.R. Hoegg J.A.
<b>Concurred in by:</b>	W.H. Goodridge and K.J. O'Brien JJ.A.
<b>Counsel for the Applicant/Appellant:</b>	Self-Represented
<b>Counsel for the First Respondent:</b>	Koren A. Thomson
<b>Counsel for the Second Respondent:</b>	Andrew A. Fitzgerald K.C.

### **Authorities Cited:**

**CASES CITED:** *Memorial University of Newfoundland v. Oleynik*, 2024 NLSC 42; *Memorial University of Newfoundland v. Oleynik*, 2023 NLSC 126, aff'd 2025 NLCA 15; *Oleynik v. Memorial University of Newfoundland*, 2025 NLCA 15, aff'g 2023 NLSC 126; *Palmer v. The Queen*, [1980] 1 S.C.R. 759; *Temple v. Peddle*, 2019 NLCA 2; *Public School Boards' Assn. of Alberta v. Alberta (Attorney General)*, 2000 SCC 2, [2000] 1 S.C.R. 44; *Chutskoff Estate v. Ruskin Estate*, 2011 SKCA 10, application for rehearing refused 2021 SKCA 47; *Jonsson v. Lymer*, 2020 ABCA 167; *Clark v. Pezzente*, 2017 ABCA 403; *Walsh v. Johnson*, 2010 NLCA 6; *Ayangma v. Canada Health Infoway*, 2017 PECA 13, leave to appeal to SCC refused, 38030, 38031, 38032 (4 October 2018); *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594; *Wang v. The Owners, Strata Plan LMS 2970*, 2022 BCCA 56; *Olumide v. Manitoba (Human Rights Commission)*, 2020 MBCA 15; *Ayangma v. Université de Moncton, Moncton Campus*, 2019 NBCA 72, leave to appeal to SCC refused, 39028 (16 April 2020); *Canada (Attorney General) v. Turmel*, 2022 FC 1526, aff'd 2023 FCA 197, leave to appeal to SCC refused, 41053 (11 April 2024); *Green v. University of Winnipeg et al.*, 2018 MBCA 137, leave to appeal to MBCA refused, 2020 MBCA 49, leave to appeal to SCC refused, 39448 (18 March 2021); *Richardson v. Richardson*, 2022 SKCA 142; *Benson v. Workers' Compensation Board (Man.) et al.*, 2008 MBCA 32; *Canada v. Olumide*, 2017 FCA 42; *Fabrikant v. Canada*, 2018 FCA 224; *Cabana v. Newfoundland and Labrador*, 2020 NLCA 44, leave to appeal to SCC refused, 39716 (2 December 2021); *Davis v. Canada (Royal Canadian Mounted Police)*, 2024 FCA 115; *Dewing v. Kostiuik et al.*, 2017 MBCA 22; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31; *B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214; *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87; *Ebert v. Birch & Anor*, [1999] EWCA Civ 3043; *Gichuru v. Purewal*, 2023 BCCA 345, leave to appeal SCC refused, 40988 (18 April 2024); *A.N.H. v. L.D.G.*, 2022 BCCA 155; *Stubicar v. JEMM Sunnyside Ltd*, 2023 ABCA 326; *Barth v. Saskatchewan (Social Services)*, 2021 SKCA 41; *College of*

*Registered Nurses of Manitoba v. Hancock*, 2023 MBCA 70; *Penner v. Montcalm (Rural Municipality)*, 2021 MBCA 52; *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92, leave to appeal to SCC refused, 36761 (10 March 2016); *Minister of National Revenue v. RBC Life Insurance Company*, 2013 FCA 50; *Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339; *Central Halifax Community Association v. Halifax (Regional Municipality)*, 2007 NSCA 39, leave to appeal to SCC refused, 32075 (4 October 2007); *Attis v. Ontario*, 2011 ONCA 675; *Young v. Noble*, 2016 NLCA 58; *Fiander v. Mills*, 2015 NLCA 31; *David Brace v. Watch Tower Bible and Tract Society of Pennsylvania et al*, 2009 NLTD 171; *Stacey v. Stacey*, 2010 NLCA 14; *Meadus v. Meadus*, 2013 NLTD(F) 37; *Penney v. Newfoundland and Labrador*, 2020 NLSC 46, aff'd 2021 NLCA 35; *Bhamjee v. Forsdick & Ors (No 2)*, [2003] EWCA Civ 1113; *MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725; *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78; *United States of America v. Shulman*, 2001 SCC 21, [2001] 1 S.C.R. 616; *Endean v. British Columbia*, 2016 SCC 42, [2016] 2 S.C.R. 162; *Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4; *Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235; *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 S.C.R. 729; *Re Lang Michener and Fabian*, 1987 CanLII 172 (ONSC); *Turmel v. Canada*, 2023 FCA 140; *Warren v. Pollitt*, 1999 CarswellOnt 24 (ONCJ (GD)), [1999] O.J. No. 31; *O'Keefe v. O'Keefe*, 2019 NLCA 70; *Squires v. Smith*, 2019 NLCA 54.

**STATUTES CONSIDERED:** *Criminal Code*, RSC 1985, c. C-46, section 683(1); *Access to Information and Protection of Privacy Act*, 2015, SNL 2015, c. A-1.2; *Judicature Act*, RSPEI 1988, c. J-2.1, section 65; *Judicature Act*, RSNS 1989, c. 240, section 45A-E; *Judicature Act*, RSNB 1973, c. J-2, section 73(1)(l); *Code of Civil Procedure*, c. C-25.01, article 55; *Courts of Justice Act*, RSO 1990, C.43, section 140; *The Court of King's Bench Act*, CCSM, c. C280, sections 73-75; *The Court of Appeal Act*, CCSM, c. C240, sections 31.1-31.3; *Judicature Act*, RSA 2000, c. J-2, sections 23-23.1; *Supreme Court Act*, RSBC 1996, c. 443, section 18; *Court of Appeal Act*, SBC 2021, c. 6, section 22; *Supreme Court Act*, RSY 2002, c. 211, section 7.1; *Court of Appeal Act*, RSY 2002, c. 47, section 12.1; *Judicature Act*, RSNWT 1988, c. J-1, sections 14.1, 21; *Judicature Act*, CSNu, c. J-10, sections 51.1-51.5; *Federal Courts Act*, RSC 1985, c. F-7, sections 40, 3, 4; *Constitution Act, 1867*, section 101; *Judicature Act*, RSNL 1990, c. J-4, section 3; *Court of Appeal Act*, SNL 2017, c. C-37.002, section 7; *Canadian Charter of Rights and Freedoms*, section 7.

**RULES CONSIDERED:** *Court of Appeal Rules*, NLR 38/16, rule 37; *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, rules 14.24(1), 38, 15.07.

**ARTICLES CONSIDERED:** Yves-Marie Morissette, “Querulous and Vexatious Litigants as a Disorder of a Modern Legal System” (2019) 24 Can Crim L Rev 265; I.H. Jacob, “The Inherent Jurisdiction of the Court” (1970) 23 Current Leg Probs 23; William H. Charles, “Inherent Jurisdiction and its Application by Nova Scotia Courts: Metaphysical, Historical or Pragmatic?” (2010) 33 Dal LJ 63; M.S. Dockray, “The Inherent Jurisdiction to Regulate Civil Proceedings” (1997) 113 Law Q Rev 120; Keith Mason, “The Inherent Jurisdiction of the Court” (1983) 57 Austl LJ 449.

**OTHER:** Canadian Judicial Council, “Statement of Principles on Self-represented Litigants and Accused Persons” (September 2006), online: <<https://cjc-ccm.ca/sites/default/files/documents/2020/Final-Statement-of-Principles-SRL.pdf>>; Law Reform Commission of Nova Scotia, “Vexatious Litigants, Final Report” (Halifax: 2006), online: <<https://lawreform.ns.ca/wp-content/uploads/2020/04/vexatious-litigants-final-report.pdf>>.

**L.R. Hoegg J.A.:**

## INTRODUCTION

[1] By order of the Supreme Court of Newfoundland and Labrador, General Division, and following an application by Memorial University of Newfoundland (“Memorial”), Anton Oleynik was declared a vexatious litigant and made subject to various conditions restricting his access to that Court (*Memorial University of Newfoundland v. Oleynik*, 2024 NLSC 42 (the “Decision”). Mr. Oleynik appeals the order.

[2] Mr. Oleynik also appealed an earlier order of the same Court denying his request to cross-examine persons who had provided affidavit evidence on behalf of Memorial in *Memorial University of Newfoundland v. Oleynik*, 2023 NLSC 126, (the “Cross-Examination Decision”).

[3] On April 17, 2024, Mr. Oleynik requested the two aforementioned appeals be consolidated and heard together. His request was granted. The two appeals (202301H0054 and 202401H0025) were heard by the same panel of judges on the

same day. A separate decision respecting the appeal of the Cross-Examination Decision was released on April 29, 2025 (*Oleynik v. Memorial University of Newfoundland*, 2025 NLCA 15, aff'g 2023 NLSC 126).

## **THE APPLICATIONS TO ADMIT ADDITIONAL EVIDENCE**

[4] On appeal, Mr. Oleynik made two applications to introduce additional evidence.

[5] On April 19, 2024, Mr. Oleynik, filed an application seeking admission of the following material as additional evidence:

- 1) March 19, 2024 correspondence from the Court attaching the Vexatious Litigant Order, and the metadata relating to that Order;
- 2) March 19, 2024 email correspondence with the Court, and attachments;
- 3) March 25, 2024 email correspondence from the Court attaching the costs Order arising from the vexatious litigant application, and the metadata relating to that Order;
- 4) October 11, 2023 correspondence from legal counsel for Memorial to the Court; and
- 5) October 5, 2023 correspondence from the Judge's judicial assistant distributing the Cross-Examination Decision to the Law Society mailing list.

In his April 5, 2024 affidavit in support of the application to introduce additional evidence, Mr. Oleynik stated:

- 6) He had received no response to his request to schedule a visit to the Court Registry for April 2, 2024; and

- 7) He did not correspond, directly or otherwise, with the Judge between 27 September 2023 and 19 March 2024.

In his April 18, 2024 supplementary affidavit in support of his application to introduce additional evidence Mr. Oleynik attached:

- 1) A Notice of Intervention respecting proceeding number 202401G1785 dated April 5, 2024;
- 2) A further amended request for case management in proceeding number 202301G2635 dated April 5, 2024; and
- 3) Case summary requests in proceedings numbered 202301G2635, 202401G1785, and 202101G4960.

[6] On September 13, 2024, Mr. Oleynik filed a second application seeking admission of the following additional evidence:

- a) *Ex parte* communication of the opposing parties;
- b) Documents evidencing media interest in the Judge's decision to declare Mr. Oleynik a vexatious litigant;
- c) The Judge's endorsements made after his decision to declare Mr. Oleynik a vexatious litigant;
- d) Notices of appeal commenced with respect to the Judge's endorsements;
- e) Documents filed in the Court of Appeal docket numbers 202201H0067 and 202301H0013;
- f) The Attorney General's response to a Notice of Constitutional Question;
- g) Exchanges with the Registry of the Court of Appeal dated 5-6 May, 30 July, and 5 August 2024;

- h) Correspondence to the Registry of the lower Court dated 27 May, 27 June, and 19 July, 2024;
- i) Case summary report for court file docket number 202101G4960 generated on 3 October 2023;
- j) Three commentaries published in *The Telegram*; and
- k) Responses to access to information requests (“ATIPP requests”) file numbers 015-01-99-24, 019-34-01-24, and JPS/79/2024.

[7] After hearing from the parties at the commencement of the appeal, the Court reserved its decision respecting Mr. Oleynik’s applications to introduce additional evidence.

## **The Law**

[8] Rule 37 of the *Court of Appeal Rules*, NLR 38/16, and established jurisprudence govern the admission of additional evidence respecting civil matters. Rule 37(3) lists the factors for consideration:

- (a) whether, by due diligence, the evidence could have been brought in the court appealed from;
- (b) the relevance of the evidence in the sense that it bears upon a decisive or potentially decisive issue in the appeal;
- (c) the credibility of the evidence;
- (d) whether the evidence, if believed, could reasonably have affected the result;  
and
- (e) any other relevant factor.

[9] Rule 37 codifies the test for admission of additional evidence as set out in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, at page 775. Although *Palmer* is a criminal case, its principles have been held to apply equally to civil cases (*Temple v. Peddle*, 2019 NLCA 2, at paras. 24-26, 41-42; and *Public School Boards’ Assn.*

of *Alberta v. Alberta (Attorney General)*, 2000 SCC 2, [2000] 1 S.C.R. 44, at paras. 6-8).

[10] *Palmer* was decided in the context of what is now section 683(1) of the *Criminal Code*, RSC 1985, c. C-46. This section empowers a court to receive the evidence of any witness “where it considers it the interests of justice” to do so. Accordingly, additional evidence can be admitted on a civil appeal if the court considers it to be in the interests of justice.

## **Analysis**

[11] I would dismiss Mr. Oleynik’s applications on the basis that (1) none of the proposed evidence is relevant to a decisive or potentially decisive issue in the appeal and (2) none of the proposed evidence could reasonably have affected the Judge’s decision. Let me explain why.

[12] Media reports, post-decision endorsements, and responses to ATIPP requests made after Memorial’s application was heard are irrelevant in timing and content to the record and evidence on which the Judge relied in declaring Mr. Oleynik a vexatious litigant. The Newfoundland and Labrador government news release and the article in the student newspaper *The Muse* respecting the administration of Memorial, dated August and July 2024 respectively, and the three commentaries published in *The Telegram* that were written by Mr. Oleynik himself after the vexatious litigant decision was released, do not bear upon a decisive or potentially decisive issue in the appeal. Neither has it been established that the metadata submitted was relevant or had the potential to affect the Judge’s decision.

[13] Court documents, including notices of intervention, requests for case management, case summaries, and the Attorney General’s response to the Notice of Constitutional Question, were before the Judge for consideration as a matter of record. Proposed additional evidence is not additional if it was already before the Judge. To the extent that the applications for additional evidence contain orders and decisions, these were part of the record and they are not new evidence. The communications among counsel that Mr. Oleynik sought to have admitted were already in the record if they involved the Court, and otherwise, were irrelevant.

## **Conclusion on Additional Evidence**

[14] In summary, much of Mr. Oleynik's proposed additional evidence was already before the Judge, and what was not, is irrelevant and has no bearing on any decisive or potentially decisive issue in Mr. Oleynik's appeal. Accordingly, there is no basis in law to grant Mr. Oleynik's applications.

## **THE VEXATIOUS LITIGANT ORDER**

### **Background**

[15] Mr. Oleynik and Memorial have a lengthy litigation history. It originated on September 27, 2017, when Memorial was required to respond to Mr. Oleynik's court application contesting Memorial's response to an order made under the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2 ("ATIPPA"). The order resulted from Mr. Oleynik's request for information concerning the hiring of a faculty member in Memorial's Department of Sociology, where Mr. Oleynik was a professor.

[16] Mr. Oleynik's initial application spawned many other proceedings: originating applications, interlocutory applications, appeals, and several other ATIPP requests. As well, Mr. Oleynik made complaints about lawyers involved in the proceedings to the Law Society of Newfoundland and Labrador and complaints to the Royal Newfoundland Constabulary which in turn have led to additional court proceedings and appeals.

[17] On September 3, 2021, Memorial's application seeking to have Mr. Oleynik declared a vexatious litigant and his access to the Supreme Court restricted was issued (Decision, at para. 48). When Memorial's vexatious litigant application was heard in September 2023, 26 distinct proceedings involving Memorial which had been initiated by Mr. Oleynik were outstanding, as well as numerous interlocutory applications and various administrative and quasi-judicial proceedings, most of which interconnect and cross-reference each other (Decision, at para. 86).

[18] In its application, Memorial also requested an order restricting Mr. Oleynik's ability to make ATIPP requests under ATIPPA.

[19] After hearing Memorial's application, the Judge declared Mr. Oleynik a vexatious litigant (Decision, at para. 106) and issued the Vexatious Litigant Order requiring him to obtain leave before continuing with any ongoing proceeding or initiating any new proceedings (see full order in the Appendix found at the end of this decision). The Judge relied on the Court's inherent jurisdiction to prevent abuse of its own process for authority to make the order (Decision, at para. 50).

[20] The Judge dismissed Memorial's request to restrict Mr. Oleynik's ability to make ATIPP requests on the ground that no gap exists in the Information and Privacy Commissioner's enabling legislation to justify such an intervention. The Information and Privacy Commissioner was represented on Memorial's application. There is no appeal from that decision.

## **The Appeal**

[21] Mr. Oleynik challenges the Judge's authority to declare him a vexatious litigant, arguing that there is no legislative or jurisprudential authority to do so. He also argues that the Judge made factual and other errors in his decision and that he was denied procedural fairness, such that the Vexatious Litigant Order should be vacated. Finally, Mr. Oleynik maintains that his raising of valid issues concerning Memorial does not make him a vexatious litigant.

## **Issues**

[22] The central issue is whether the Judge erred in declaring Mr. Oleynik a vexatious litigant and issuing the Vexatious Litigant Order restricting his access to the Supreme Court. Resolution involves determining (1) whether the Judge had jurisdiction to make such an order, (2) if so, whether the facts and circumstances the Judge relied on justify the order, and (3) whether the Judge denied Mr. Oleynik procedural fairness or made errors that would require this Court to vacate the order.

## Discussion

[23] A vexatious litigant order is an order that declares a litigant – a person – to be vexatious and restricts that person’s access to a court or courts. It is an order that is personal to the litigant so declared.

[24] A vexatious litigant order is usually requested by way of an application from a party involved in litigation with the person sought to be declared vexatious. Courts have made vexatious litigant orders on their own motions, but such motions have been held to require that notice and an opportunity to respond be given to the proposed vexatious litigant, the Attorney General, and other parties in the litigation (see *Chutskoff Estate v. Ruskin Estate*, 2011 SKCA 10, at paras. 27-28, application for rehearing refused 2011 SKCA 47; *Jonsson v. Lymer*, 2020 ABCA 167, at para. 32; and *Clark v. Pezzente*, 2017 ABCA 403, at para. 2). Although it was not at issue in this case, the Judge stated that a court could declare a litigant to be vexatious on its own motion (Decision, at paras. 61-62). I agree, provided that notice and an opportunity to respond to the motion is given to the impugned litigant and other involved parties.

[25] The concept of vexatiousness in legal proceedings is well known in our law. Rule 14.24(1)(b) of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, provides that pleadings, affidavits, statements of facts or anything therein, can be struck out or amended, and a proceeding may be stayed or dismissed, or judgment entered accordingly, if determined to be vexatious. A proceeding may be considered vexatious and dismissed if it is determined to have been brought for an improper purpose, such as to harass, annoy or embarrass a party and not for the legitimate purpose of seeking the vindication of legal rights (*Walsh v. Johnson*, 2010 NLCA 6, at paras. 18, 20). Such dismissals will end those particular proceedings.

[26] Rule 14.24(1) addresses pleadings and proceedings, not people. A proceeding can be determined to be vexatious without declaring the involved litigant, usually a plaintiff or applicant, to be vexatious.

[27] A litigant who is declared to be vexatious can be made subject to conditions affecting not only the particular matter or matters from which the declaration arose, but also new litigation. New litigation could include litigation which could be said to touch on issues previously raised or decided, as well as wholly unrelated litigation.

In short, declaring a proceeding to be vexatious ends a proceeding, whereas declaring a litigant to be vexatious means that that litigant has to comply with the conditions stated in the vexatious litigant order in order to continue existing litigation and perhaps also to bring entirely new litigation. Such restrictions potentially apply *ad infinitum*.

[28] The difference between vexatious litigation and declaring a litigant to be vexatious is illustrated in *Ayangma v. Canada Health Infoway*, 2017 PECA 13, leave to appeal to SCC refused, 38030, 38031, 38032 (4 October 2018). In *Ayangma*, the Prince Edward Island Court of Appeal upheld a trial judge’s dismissal of a vexatious action but overturned the judge’s order restricting the litigant from initiating any new proceeding. The Court reasoned that because the litigant’s case that led to the appeal was at an end, there was no need to create a prospective bar to the litigant’s further access to the court or any tribunal. See also *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594, where the court distinguished between vexatious litigation and a vexatious litigant:

[26] Each of these hallmarks [of vexatious litigation listed in *Re Lang Michener and Fabian*, 1987 CanLII 172 (ONSC)], the respondents submit, is present in this case. I do not disagree, but the ultimate question is whether the litigant has taken himself over the line. Drawing the line in any particular case is a matter of judgement reviewable only on the demonstration of clear error.

(Underlining added.)

[29] Mr. Oleynik, like the vast majority (if not all) of the individuals who have been declared vexatious litigants, is self-represented (see for example *Wang v. The Owners, Strata Plan LMS 2970*, 2022 BCCA 56; *Olumide v. Manitoba (Human Rights Commission)*, 2020 MBCA 15; *Ayangma v. Université de Moncton, Moncton Campus*, 2019 NBCA 72, leave to appeal to SCC refused, 39028 (16 April 2020); *Canada (Attorney General) v. Turmel*, 2022 FC 1526, aff’d 2023 FCA 197, leave to appeal to SCC refused, 41053 (11 April 2024); *Green v. University of Winnipeg et al*, 2018 MBCA 137, leave to appeal to MBCA refused, 2020 MBCA 49, leave to appeal to SCC refused, 39448 (18 March 2021); *Richardson v. Richardson*, 2022 SKCA 142; *Benson v. Workers’ Compensation Board (Man.) et al.*, 2008 MBCA 32; *Jonsson*, at para. 8; *Canada v. Olumide*, 2017 FCA 42; *Fabrikant v. Canada*, 2018 FCA 224; and see also Yves-Marie Morissette, “Querulous and Vexatious Litigants as a Disorder of a Modern Legal System” (2019) 24 Can Crim L Rev 265, at 274-275).

[30] Most times self-represented litigants handle themselves appropriately. Other times self-represented litigants exhibit inappropriate behaviour which can be dealt with by judges giving direction or assistance to those litigants or dismissing litigation without declaring the litigants themselves vexatious. Judges must take care to avoid confusing conduct that would justify a vexatious litigant order with conduct that is explained by lack of knowledge and unfamiliarity with court procedures, misunderstanding of legal issues or rights, or passionate but misguided pursuit of a case. That said, any direction and assistance given to self-represented litigants to address the above concerns must be balanced against the fact that judges are not required, nor permitted, to give legal advice to litigants, or to intervene in a way that causes unfairness to opposite parties (see *Cabana v. Newfoundland and Labrador*, 2020 NLCA 44, at paras. 125-129, leave to appeal to SCC refused, 39716 (2 December 2021); *Davis v. Canada (Royal Canadian Mounted Police)*, 2024 FCA 115, at paras. 37-42; and *Dewing v. Kostiuk et al.*, 2017 MBCA 22, at paras. 17-22).

[31] However, despite the alternatives available to judges to guide proceedings and assist self-represented litigants in the limited way they can, sometimes vexatious litigant orders cannot be avoided. As noted in *Jonsson*, a self-represented litigant cannot use the fact that they are self-represented as a shield against an allegation that they are also a vexatious litigant (at para. 15).

[32] The conduct of litigation in the courts is generally done by counsel for the parties. In recent years, Canadian courts have made efforts to accommodate litigants who represent themselves so as to provide them access to justice which they otherwise would not have. However, litigants who choose to represent themselves must recognize that conducting their own litigation involves more than simply being a litigant. While I am not suggesting that self-represented litigants are bound by all of the same rules and ethics that pertain to counsel in the conduct of litigation, I do suggest that when self-represented litigants conduct their own litigation, they must recognize that court processes apply to them, and that courts can regulate them in similar manner to how they regulate counsel. This point is made at page 5 of the Canadian Judicial Council's "Statement of Principles on Self-represented Litigants and Accused Persons", issued in September 2006:

Self-represented persons, like all other litigants, are subject to the provisions whereby courts maintain control of their proceedings and procedures. In the same manner as with other litigants, self-represented persons may be treated as vexatious or abusive litigants where the administration of justice requires it. The ability of judges to promote access may be affected by the actions of self-represented litigants themselves.

[33] Declaring a person to be a vexatious litigant is a serious legal ruling. It is serious because it restricts that person's access to justice, in particular, access to the courts. Canadians have a constitutional right to access superior courts to have their disputes resolved (*Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31, at paras. 35-37). This constitutional right is accorded to all persons, including vexatious litigants. Further, this right is supported by the rule of law, which former Chief Justice Dickson stated could not exist without access to justice (*B.C.G.E.U. v. British Columbia (Attorney General)*, [1988] 2 S.C.R. 214, at 230). Justice Karakatsanis's comment in *Hryniak v. Mauldin*, 2014 SCC 7, [2014] 1 S.C.R. 87, also pertains:

[26] ... without an accessible public forum for the adjudication of disputes, the rule of law is threatened and the development of the common law undermined.

[34] At a glance, restricting a litigant's access to the court could be seen as unconstitutional. However, perspective is required.

[35] Vexatious litigant orders do not bar a litigant's access to the courts. Rather, vexatious litigant orders regulate that litigant's access. At paragraph 27 of *Canada v. Olumide*, Stratas J.A. put it this way:

[27] ... A declaration that a litigant is vexatious does not bar the litigant's access to the courts. Rather, it only regulates the litigant's access to the courts: the litigant need only get leave before starting or continuing a proceeding.

[36] Bearing in mind the similar principles informing access to justice in England, the English Court of Appeal in *Ebert v. Birch & Anor*, [1999] EWCA Civ 3043, addressed the tension between a litigant's right to access the courts and the litigant's vexatious conduct. The Court explained that the litigant had already brought vexatious proceedings and that he would continue to bring such proceedings unless he was restricted from doing so. The Court expressed the restriction this way:

... [Such an order involves] a serious inhibition on a prospective litigant exercising his normal rights of access to the courts. However, the extent of this interference should not be exaggerated. First it is only an inhibition for bringing proceedings without the leave of the court. If the proceedings are arguably meritorious leave will be forthcoming. Secondly, the court will not make an order unless there is serious grounds for doing so and if there are no serious grounds, the order will be capable of being set aside on appeal.

[37] Finally, the Court’s comment at paragraph 47 of *Trial Lawyers* pertains: “There is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may actually increase efficiency and overall access to justice.”

### *Rationales for Vexatious Litigant Orders*

[38] The jurisprudence recognizes two rationales for declaring litigants to be vexatious and restricting their access to courts.

[39] One rationale is to protect other litigants who are forced to respond to prolix, relentless, and oppressive litigation that targets, harasses, or insults them, and that has little to no legitimate purpose. It goes without saying that such litigation can cause harm to these litigants, and even to other persons involved in the litigation, as well as to institutional and corporate entities. The harm can be both personal and professional, and involve extensive financial and time commitments. A court must be able to protect people and parties appearing before it; to allow such harm to persist unchecked would undermine the court as a neutral arbiter of disputes and undermine public respect for the administration of justice.

[40] The other rationale for vexatious litigant orders is that they protect the court’s ability to carry out its work in a fair, orderly and efficient manner, in accordance with the rule of law. This is a court’s *raison d’être*; its ultimate objective. Court resources are not infinite, and all users must have timely, proportionate, and fair access to them. This objective is thwarted if the court is bombarded with repetitive and hopeless proceedings that waste scarce, skilled resources, and detract from the court deciding meritorious disputes in a timely and efficient manner.

[41] Both rationales explain why and how vexatious litigant orders provide protection and respect for the unique and essential position of the courts within the Canadian constitutional framework. Extensive jurisprudence supports both rationales (see *Gichuru v. Purewal*, 2023 BCCA 345, at paras. 17-19, leave to appeal SCC refused, 40988 (18 April 2024); *A.N.H. v. L.D.G.*, 2022 BCCA 155, at paras. 49, 51; *Stubicar v. JEMM Sunnyside Ltd*, 2023 ABCA 326, at para. 19; *Barth v. Saskatchewan (Social Services)*, 2021 SKCA 41, at paras. 14, 18; *College of Registered Nurses of Manitoba v. Hancock*, 2023 MBCA 70, at paras. 2-3, 9-11, 43; *Green*, at paras. 55, 58; *Penner v. Montcalm (Rural Municipality)*, 2021 MBCA 52, at para. 4; *Tupper v. Nova Scotia (Attorney General)*, 2015 NSCA 92, at paras. 1, 3, leave to appeal to SCC refused, 36761 (10 March 2016); *Canada v. Olumide*, at paras. 17-22; and *Fabrikant*, at paras. 25, 30).

### *Canadian Law*

[42] The enabling legislation of most superior courts in Canada and the Federal Courts provides for declaring litigants vexatious and restricting their access to the courts (see *Judicature Act*, RSPEI 1988, c. J-2.1, at s. 65 (Prince Edward Island); *Judicature Act*, RSNS 1989, c. 240, at s. 45A-E (Nova Scotia); *Judicature Act*, RSNB 1973, c. J-2, at s. 73(1)(l) (New Brunswick); *Code of Civil Procedure*, c. C-25.01, at art. 55 (Quebec); *Courts of Justice Act*, RSO 1990, c. C.43, at s. 140 (Ontario); *The Court of King’s Bench Act*, CCSM, c. C280, at ss. 73-75 (Manitoba); *The Court of Appeal Act*, CCSM, c. C240, at ss. 31.1-31.3 (Manitoba); *Judicature Act*, RSA 2000, c. J-2, at ss. 23-23.1 (Alberta); *Supreme Court Act*, RSBC 1996, c. 443, at s. 18 (British Columbia); *Court of Appeal Act*, SBC 2021, c. 6, at s. 22 (British Columbia); *Supreme Court Act*, RSY 2002, c. 211, at s. 7.1 (Yukon); *Court of Appeal Act*, RSY 2002, c. 47, at s. 12.1 (Yukon); *Judicature Act*, RSNWT 1988, c. J-1, at ss. 14.1, 21 (Northwest Territories); *Judicature Act*, CSNu, c. J-10, at ss. 51.1-51.5 (Nunavut); and *Federal Courts Act*, RSC 1985, c. F-7, at s. 40). Such legislation generally empowers these courts to declare a litigant – a person – vexatious, and make orders restricting that litigant from continuing and/or initiating proceedings.

[43] All of the provincial superior courts referred to above also have inherent jurisdiction to regulate their own procedure, to make practice directives, and to control abuse of process to the extent that it does not conflict with existing statutory authority. In addition to its specific legislative authority respecting vexatious litigants, the Federal Court of Canada, a statutory court, has a plenary power, under section 101 of the *Constitution Act, 1867*, and sections 3 and 4 of the *Federal Courts Act*, which is virtually the same as the inherent jurisdiction of superior court (*Minister of National Revenue v. RBC Life Insurance Company*, 2013 FCA 50, at para. 36).

### *The Law in Newfoundland and Labrador*

[44] Unlike other Canadian jurisdictions, the province of Newfoundland and Labrador has neither legislation nor rules authorizing vexatious litigant orders or restricting a litigant’s access to the court.

[45] In this case, the Judge stated that his jurisdiction to make the Vexatious Litigant Order against Mr. Oleynik was grounded “in a superior court’s inherent authority to prevent abuses of its own process” (at para. 50). Mr. Oleynik challenges

that decision. Accordingly, the question is whether superior courts in this province can exercise their inherent jurisdiction to declare litigants vexatious and restrict their access to the courts to prevent abuse of process.

**Does the inherent jurisdiction vested in the Supreme Court of Newfoundland and Labrador authorize the imposition of vexatious litigant orders to prevent abuse of the Court's process?**

*Standard of Review*

[46] Jurisdictional issues are questions of law. Acting without jurisdiction, acting beyond jurisdiction, and refusing to exercise jurisdiction, each command a correctness standard of review (*Canada (Citizenship and Immigration) v. Khosa*, 2009 SCC 12, [2009] 1 S.C.R. 339, at para. 42). More specifically, both *Central Halifax Community Association v. Halifax (Regional Municipality)*, 2007 NSCA 39, at para. 17, leave to appeal to SCC refused, 32075 (4 October 2007), and *Attis v. Ontario*, 2011 ONCA 675, at paras. 10-11, held that the availability of inherent jurisdiction is a question of law. I agree.

*The Law Respecting Inherent Jurisdiction*

[47] The inherent jurisdiction of superior courts in this province was inherited from the law of England and is recognized in section 3 of the *Judicature Act*, RSNL 1990, c. J-4. Similarly, section 7 of the *Court of Appeal Act*, SNL 2017, c. C-37.002, gives this Court all of the inherent powers of a superior court at common law.

[48] Both the Supreme Court of Newfoundland and Labrador and the Court of Appeal of Newfoundland and Labrador have referenced the concept of declaring a litigant to be vexatious on the basis of the litigant abusing the court's process. In *Young v. Noble*, 2016 NLCA 58, this Court acknowledged that a court could generally make a vexatious litigant order to *bar or control* a litigant's access to the courts for abuse of process (at paras. 31-33). However, the reference was in passing only, because no vexatious litigant order was requested or granted. In *Fiander v. Mills*, 2015 NLCA 31, at paragraphs 11, 36, 39, this Court's reference to inherent jurisdiction being available to prevent a litigant from abusing the court's process was also in passing. In *David Brace v. Watch Tower Bible and Tract Society of Pennsylvania et al*, 2009 NLTD 171, at paragraph 22, the Supreme Court of Newfoundland and Labrador stated that it could declare a person to be a vexatious litigant and restrain their access to the court for abusing the Court's process.

However, the Court did not do so, nor was it asked to do so. Nevertheless, the remarks of Green C.J. (NLSC), as he then was, explain considerations that would be in play to reach such conclusions:

[52] I would also not have been prepared, on the basis of the existing record, to declare that Mr. Brace is a vexatious litigant and is therefore abusing the court process. The fact that he was party to a large number of proceedings over the past 12 years and sued a large number of individuals, corporations and government agencies, while out of the ordinary enough to raise a quizzical eyebrow, would not *in itself* be sufficient to conclude that he must necessarily be abusing his right of access to the courts. The ability to access the courts is a fundamental right in a democracy under the rule of law. It must not be taken away lightly. Without information as to the nature of the lawsuits, the circumstances under which they were undertaken, their results and the types of rulings that were made on them, it would be difficult to conclude that Mr. Brace's *modus operandi* was to commence actions that were bogus or without apparent substantial merit for the purpose of harassing defendants or otherwise acting for other than legitimate motives.

(Italics in original.)

[49] Chief Justice Green also referenced the possibility of imposing a vexatious litigant order in *Stacey v. Stacey*, 2010 NLCA 14. In *Stacey*, he said that the authority for doing so could obtain under the court's "inherent authority to control its own process":

[3] During the hearing, counsel for the respondents withdrew the application based on the allegation that the appellant was a vexatious litigant. As a result, it was not necessary for the Court to express opinions on the degree to which this Court may make orders under its inherent authority to control its own process restricting access to the Court by litigants deemed to be vexatious.

[50] In the instant case, the Judge relied on *Meadus v. Meadus*, 2013 NLTD(F) 37, and *Penney v. Newfoundland and Labrador*, 2020 NLSC 46, aff'd 2021 NLCA 35, as support for the Court's ability to declare Mr. Oleynik a vexatious litigant. In *Penney*, the Court stated it had jurisdiction "to require Mr. Penney to obtain leave to start new proceedings or to continue ongoing matters" (at para. 13). In *Meadus*, the Respondent in a family law case was declared a vexatious litigant and ordered to seek leave before initiating any further litigation in the Family Court, and his applications to vary previous orders of the Family Court were dismissed.

[51] Some Canadian appellate courts have ruled on the use of inherent jurisdiction in the context of vexatious litigant orders. Saskatchewan courts rely on their inherent jurisdiction to prevent abuse of their process for primary authority to make such orders and their rules for guidance in doing so (see *Richardson*, at paras. 28-30; and *Barth*, at para. 10). As well, the British Columbia Court of Appeal relied on its inherent jurisdiction in *A.N.H.* to supplement its legislative authority in order to add additional conditions to a vexatious litigant order (at paras. 48-50). See also *Tupper*, where the Nova Scotia Court of Appeal stated that the Nova Scotia legislation governing vexatious litigants did not replace the superior court's inherent jurisdiction; rather, the Nova Scotia legislation works hand in hand with the court's inherent jurisdiction (at paras. 23-28).

[52] Notably, the English case *Ebert*, referenced above, endorsed the lower court's reliance on inherent jurisdiction to restrict a vexatious litigant's access to the court.

[53] Another English case, *Bhamjee v. Forsdick & Ors (No 2)*, [2003] EWCA Civ 1113, summarizes the exercise of inherent jurisdiction to restrict litigants' access to the court in English common law. The Court recognized the historical supervisory role of courts in regulating litigants who submit themselves to the compulsory jurisdiction of the court, and explained how it has developed into the ordering of extended civil restraint orders which restrain litigants from commencing any action or making any application in a court without the prior permission of the court (at paras. 30-44). The Court stated that the rationale for this development was because the vexatious activities of litigants "are proving to be such a drain on the resources of a court" (at para. 44). *Bhamjee*, quoting another case, noted that the exercise of inherent jurisdiction to impose civil restraint orders is necessary "to restrain litigants from wasting the time of court staff and disturbing the orderly conduct of court processes in a completely obsessive pursuit of their own litigation, taking it forward by one unmeritorious application after another and insisting that they should be afforded priority over other litigants."

[54] A similar point is made by Morrisette in "Querulous and Vexatious Litigants as a Disorder of a Modern Legal System", where he acknowledges that the victimization of parties who have to face vexatious litigants in court has become a modern phenomenon in Canadian courts (at 308).

[55] The scope of inherent jurisdiction is difficult to demarcate. In English superior courts it is thought to derive from the very nature of a court as a legal forum for determining the rights of litigants. I.H. Jacob's article, "The Inherent Jurisdiction

of the Court” (1970) 23 Current Leg Probs 23, was recognized by the Supreme Court of Canada as the foundational work respecting the inherent jurisdiction of superior courts (*MacMillan Bloedel Ltd. v. Simpson*, [1995] 4 S.C.R. 725, at para. 29). Jacob explains that such jurisdiction, which is a distinct part of a superior court’s general jurisdiction, exists “not from any statute or rule of law, but from the very nature of the court as a superior court of law” (at 27) to enable the “judiciary to uphold, to protect and to fulfill the judicial function of administering justice according to law in a regular, orderly and effective manner” (at 28). At page 51, he summarily described inherent jurisdiction as:

... the reserve or fund of powers, a residual source of powers, which the court may draw upon as necessary whenever it is just or equitable to do so, and in particular to ensure the observance of the due process of law, to prevent improper vexation or oppression, to do justice between the parties and to secure a fair trial between them.

[56] Jacob’s article, written in 1970, does not contemplate the use of inherent jurisdiction to restrict a litigant’s access to courts. In fact, Jacob stated that “[t]he court has no power, even under its inherent jurisdiction, to prevent a person from commencing proceedings which may turn out to be vexatious” (at 43). While Jacob states that a superior court’s inherent jurisdiction gives it power to regulate the practice of the court, and prevent abuse of its process, his comments about its use are largely confined to remedies respecting litigation, not litigants. It is worth noting that Jacob did not have to squarely address whether inherent jurisdiction could empower a court to restrain a litigant because at that time in England there was statutory authority to do so (at 43, footnote 71). However, Jacob does acknowledge that inherent jurisdiction empowers a superior court to punish contemptors, and regulate and supervise people who function as officers of the court, including solicitors and barristers at pages 46-48:

The inherent jurisdiction of the court extends to the exercise of its protective and coercive powers over some classes of persons. ...

Under its inherent jurisdiction, the court has power by summary process to control the conduct of its officers, and indeed of all persons who are in some official way connected with the court or its process or any pending proceedings, ...

This power of control and protection may be exercised in respect of solicitors who are officers of the court, and also barristers, who although not strictly officers of the court have a special privilege to practise the law in the courts; ...

... In respect of disciplinary matters, control over the conduct of solicitors is now usually exercised by the Disciplinary Committee of the Law Society, a domestic forum created by statute. But in respect of neglect or misconduct in proceedings before a court, the solicitor may be proceeded against summarily under the inherent jurisdiction of the court. The principles were stated by Lord Wright as follows:

“The underlying principle is that the court has a right and a duty to supervise the conduct of its solicitors, and visit with penalties any conduct of a solicitor which is of such a nature as to tend to defeat justice in the very cause in which he is engaged professionally. The matter complained of need not be criminal. It need not involve peculation or dishonesty. ... It need not involve personal obliquity. ... It would perhaps be more accurate to describe it as conduct which involves a failure on the part of the solicitor to fulfil his duty to the court and to realise his duty to aid in promoting in his sphere the cause of justice. ...”

(Footnotes omitted.)

[57] Other legal scholars who have explored the origins, evolution, and application of inherent jurisdiction have not suggested that inherent jurisdiction can be relied on to restrict a litigant’s access to courts (see William H. Charles, “Inherent Jurisdiction and its Application by Nova Scotia Courts: Metaphysical, Historical or Pragmatic?” (2010) 33 Dal LJ 63; and M.S. Dockray, “The Inherent Jurisdiction to Regulate Civil Proceedings” (1997) 113 Law Q Rev 120). However, in “The Inherent Jurisdiction of the Court” (1983) 57 Austl LJ 449, Australian scholar and former jurist Keith Mason notes that in Australia, inherent jurisdiction can be relied on to restrict a litigant from making further interlocutory applications without leave of the court, but there is no inherent power to restrict a vexatious litigant from commencing proceedings (at 454).

[58] The Supreme Court of Canada has endorsed the exercise of a superior court’s inherent jurisdiction in several cases, although none involved restricting a litigant’s access to the court in the manner discussed herein.

[59] In *MacMillan Bloedel Ltd.*, the Supreme Court of Canada discussed inherent jurisdiction in the context of a contempt proceeding involving a young offender, where it was argued that the statutory jurisdiction of the youth court deprived the superior court of jurisdiction respecting its *ex facie* contempt power. In the course of deciding that the superior court’s inherent jurisdiction was not ousted, Lamer C.J. endorsed Jacob’s statement that one of the paths along which the exercise of inherent jurisdiction developed was “regulating the practice of the court and preventing the

abuse of its process”, and that inherent jurisdiction is a power “essential to the administration of justice and the maintenance of the rule of law” (at paras. 30, 38).

[60] In *R. v. Caron*, 2011 SCC 5, [2011] 1 S.C.R. 78, the Supreme Court ruled that an Alberta superior court could rely on its inherent jurisdiction to order the Crown to provide funding to a defendant because it was “essential to the administration of justice and the maintenance of the rule of law” that the defendant be able to complete his constitutional argument respecting his *Canadian Charter of Rights and Freedoms* right to a French language trial in a provincial court. In so doing, the Court quoted Jacob saying that “[t]he inherent jurisdiction of the court may be invoked in an apparently inexhaustible variety of circumstances and may be exercised in different ways” as long as it does not contravene any statutory law (underlined in original, at paras. 29, 32). However, the Court made clear that such power must “be exercised sparingly and with caution” (at para. 30).

[61] In *United States of America v. Shulman*, 2001 SCC 21, [2001] 1 S.C.R. 616, inherent jurisdiction was also invoked. *Shulman* is an extradition case, which involved a fugitive’s application for the admission of fresh evidence related to his section 7 *Charter* argument. In allowing the application, the Court stated:

[33] Not only is the Court of Appeal a forum of original jurisdiction for *Charter* purposes under the *Extradition Act* as a result of 1992 amendments, but it also has, like all courts, an implied, if not inherent, jurisdiction to control its own process, including through the application of the common law doctrine of abuse of process.

[62] In *Endean v. British Columbia*, 2016 SCC 42, [2016] 2 S.C.R. 162, the Supreme Court of Canada considered relying on inherent jurisdiction to allow superior court justices from different provinces to sit outside of their respective jurisdictions in order to supervise agreements respecting the settlement of a national class action brought by persons infected by hepatitis C from contaminated blood. Ultimately, the Court did not rely on inherent jurisdiction for authority to permit judges to do so. Instead, it found authority for the requested relief within the relevant class action legislation. Nevertheless, the Court commented as follows:

[61] ... The Ontario Law Reform Commission in its report observed that “the general management power” provisions it recommended, similar to what is now s. 12, might be seen as “unnecessary” in light of the inherent jurisdiction of the court but that the “inclusion in the proposed *Class Actions Act* of an express general management power would encourage Ontario courts to resort to this power to ensure the proper functioning of class actions”: p. 451. In a similar vein, the Alberta Law Reform Institute commented on s. 12 of the ULCC’s *Uniform Class Proceedings Act*, similarly

worded to the provisions in issue here, noting that “[t]he court probably already enjoys the general power” described in that provision: Final Report No. 85, *Class Actions* (2000), at p. 111.

[62] Of course, these inherent powers may be limited. The exercise of inherent jurisdiction is subject to the constraints of the Constitution, as well as to any statutory provisions and common law rules that might limit the court’s ability to exercise that power: see, e.g., *Criminal Lawyers’ Association*, at paras. 22-24; *Caron*, at para. 32; *Halsbury’s Laws of England* (5th ed. 2010), vol. 24, at pp. 328-29. ...

[63] In the final analysis, the *Endean* court made it clear that while superior courts can rely on inherent jurisdiction to control the proper functioning of class action litigation, they should exhaust the power afforded to them in applicable legislation before “dipping into this important but murky pool of residual authority that forms their inherent jurisdiction” (at para. 24).

[64] In summary, the Supreme Court of Canada jurisprudence authorizes the exercise of inherent jurisdiction when necessary, providing it is “exercised sparingly and with caution” (*Caron*, at para. 30). In *Caron*, the Court drew on inherent jurisdiction to the extent necessary to prevent an injustice and accomplish its statutory objectives because there was no other option. In *Shulman*, the Supreme Court of Canada invoked inherent jurisdiction to give effect to section 7 *Charter* rights because there was no other way to do justice in the circumstances.

[65] Necessity also informed the Court’s decision in *Endean* not to draw upon inherent jurisdiction, because it was not necessary. Rather, modern interpretation of governing legislation provided a viable option to effect a just and equitable result without the need to resort to inherent jurisdiction (*Endean*, at paras. 23, 58).

[66] I note that necessity also informed the references to possible reliance on inherent jurisdiction to prevent abuse of process in *Brace* and *Stacey*. Similarly, the rulings in *Penney* and *Meadus* were determined to be necessary to prevent abuse of the responding parties and protect the court’s process.

[67] Mr. Oleynik relies on the Law Reform Commission of Nova Scotia, “Vexatious Litigants, Final Report,” (Halifax: 2006), to support his position. The Commission was mandated to examine how Nova Scotia courts could deal with vexatious litigants. It considered whether the inherent jurisdiction of a superior court to control its own process and prevent abuse could be used to restrict a litigant’s access to the court. Its conclusion on that point is stated on page 11:

... Although it is doubtful whether a vexatious litigants order could be granted on the basis of inherent jurisdiction, there is no question that such an order would be available if permitted through legislation which specifically grants courts the power to prevent known vexatious litigants from commencing any more proceedings. ...

[68] Notably, Nova Scotia brought in legislation addressing the issue in 2009, three years after the Commission's report.

*Conclusion on the Availability of Inherent Jurisdiction to Make a Vexatious Litigant Order*

[69] In the result, and with respect to those who think otherwise, I am of the view that a court can invoke inherent jurisdiction to make orders restricting a litigant's access to the court to prevent abuse of process when necessary for the court to do justice (*Caron*; and *Shulman*), where the administration of justice requires it (*Statement of Principles on Self-represented litigants and Accused Persons*, at 5(4)), and as necessary when just or equitable to do so and to ensure the due process of law (*Jacob*, at 51), provided the jurisdiction is exercised sparingly and with caution (*Caron*, at para. 30).

[70] It goes without saying that abuse of process, of a nature and degree that prevents a court from exercising its general jurisdiction to adjudicate disputes fairly, effectively, and in accordance with the rule of law, cannot be tolerated. If the cause of the abuse is a litigant's conduct which cannot be remediated through normal procedures, then it is necessary to restrict the litigant's access to the court. Courts must be able to regulate access to the courts by litigants whose conduct abuses its process, and if there is no legislative authority to do so, it becomes necessary for courts to invoke their inherent jurisdiction to do so. Necessity is the controlling concept. Failing to regulate would prevent courts from carrying out their judicial mandate to decide cases fairly, effectively, and in accordance with the rule of law, thereby rendering nugatory their purpose and function within our constitutional order. Accordingly, in my view, the inherent jurisdiction vested in the Supreme Court of Newfoundland and Labrador authorizes the imposition of vexatious litigant orders to prevent abuse of the Court's processes.

## Was Mr. Oleynik abusing the process of the Court?

### *Standard of Review*

[71] The Judge ruled that Mr. Oleynik was abusing the process of the court. If abuse of process is the reason for invoking inherent jurisdiction, as a matter of logic, abuse of process must be established. Whether there is abuse of process is a question of law, reviewable on the standard of correctness (*Saskatchewan (Environment) v. Métis Nation – Saskatchewan*, 2025 SCC 4, at para. 31).

[72] The Supreme Court of Canada described the doctrine of abuse of process in *Saskatchewan (Environment)*:

[33] The doctrine of abuse of process is concerned with the administration of justice and fairness (*Behn*, at para. 41). The doctrine engages the inherent power of the court to prevent misuse of its proceedings in a way that would be manifestly unfair to a party or would in some way bring the administration of justice into disrepute (*Toronto (City) v. C.U.P.E., Local 79*, 2003 SCC 63, [2003] 3 S.C.R. 77, at para. 37; *Behn*, at para. 39; *Abrametz*, at para. 33).

[73] The concerns the doctrine addresses — fairness and the proper administration of justice — are the same as the rationales for making vexatious litigant orders. In short, fair treatment of parties in litigation and ensuring that justice is administered properly provide the standard by which Mr. Oleynik’s conduct should be assessed in order to determine whether it constituted abuse of process.

[74] Abuse of process can be varied in nature and degree. If abuse of process is established, the question becomes whether the abuse of process is of such a nature and degree that warrants the imposition of a vexatious litigant order.

[75] Imposing a vexatious litigant order involves the application of legal principles to the impugned litigant’s conduct in all of the circumstances of the case. Careful consideration of the nature and degree of the litigant’s conduct in the context of the record, its effect on others involved in the litigation and its effect on the court, is required. As well, legal principles like the constitutional right to access the courts, the purpose of the doctrine of abuse of process, and the rationales for vexatious litigant orders, must also inform whether the abuse of process ought to result in the imposition of a vexatious litigant order.

[76] The application of legal principles to a set of facts in civil cases is a question of mixed fact and law. The standard of review in such cases is the deferential standard of palpable and overriding error (*Housen v. Nikolaisen*, 2002 SCC 33, [2002] 2 S.C.R. 235, at paras. 36-37; and *Salomon v. Matte-Thompson*, 2019 SCC 14, [2019] 1 S.C.R. 729, at paras. 32-33).

*Vexatious Litigant Orders, Abuse of Process, and Mr. Oleynik's Conduct*

[77] Several Canadian cases list conduct that courts have typically found to justify vexatious litigant orders. For example, see *Re Lang Michener and Fabian*, 1987 CanLII 172 (ONSC); *Green*, at paragraph 29; *Turmel v. Canada*, 2023 FCA 140, at paragraph 7; and *Warren v. Pollitt*, 1999 CarswellOnt 24 (ONCJ (GD)), [1999] O.J. No. 31, at paragraphs 8-9, from which the judge quoted.

[78] Cases that identify vexatious litigant conduct provide useful guidance to judges. However, such examples are not a closed list. Neither are listings of vexatious conduct meant to suggest that several identified vexatious behaviours or litigations are necessary to ground an order. In this regard, it is important to appreciate that vexatious behaviour is varied and contextually driven, as Stratas J.A. observed at paragraph 32 of *Canada v. Olumide*:

[32] In defining “vexatious,” it is best not to be precise. Vexatiousness comes in all shapes and sizes. Sometimes it is the number of meritless proceedings and motions or the reassertion of proceedings and motions that have already been determined. Sometimes it is the litigant’s purpose, often revealed by the parties sued, the nature of the allegations against them and the language used. Sometimes it is the manner in which proceedings and motions are prosecuted, such as multiple, needless filings, prolix, incomprehensible or intemperate affidavits and submissions, and the harassment or victimization of opposing parties.

[79] The Judge focused on four categories of Mr. Oleynik’s vexatious behaviour:

1. Raising issues that have already been determined and bringing actions that have no possibility of success.
2. Bringing actions for improper purposes.
3. Rolling issues into subsequent proceedings, making unnecessary appeals, and obfuscating any potentially legitimate dispute.

4. [Making] unsubstantiated allegations of misconduct, bias, retaliatory complaints, conspiracy theories, and [other] inappropriate behaviour.

[80] At paragraph 106 of his Decision, the Judge listed examples of Mr. Oleynik's conduct that led to his conclusion that Mr. Oleynik was abusing the court's process:

- Oleynik has shown an unwillingness to abide by Court orders and continually attempts to put matters that have already been decided back before the Court;
- Oleynik has trafficked in conspiracies and unfounded allegations of misconduct and bias for which there is no evidential basis, and has repeatedly made these assertions to the Court as grounds for which the orders he seeks should be granted;
- Oleynik's true purpose, if it can be said that he has ever had one, has long become lost in his efforts to use the judicial process to harass Memorial, its employees, and its counsel;
- Oleynik has created a complex web of interrelated proceedings that serve no purpose other than to confuse and obfuscate his true intention: to waste public resources, and to harass Memorial;
- Oleynik has shown no sign of ceasing his activities, and has willfully defied instructions from the Court that have attempted to control his abuse of Court processes;
- Oleynik has made multiple accusations against Court staff and has rejected explanations when provided. If there is an error in filing, he alleges conspiracy and collusion rather [than accepting] the fact that an error may more likely be the natural consequence of having started dozens of separate matters before the Court.
- Oleynik has repeatedly sent correspondence directly to judges overseeing his matters and has not ceased this practice when told of its inappropriateness. Oleynik has shown willful disrespect to the importance of keeping all sides to the dispute aware of communications with the Court;
- Oleynik has made complaints to the Law Society with respect to counsel for Memorial, has made repeated spurious claims of judicial bias, and has attempted to punish others through the institution of quasi-criminal proceedings; and,

- Oleynik has behaved disrespectfully before the Court, both to its judges and its staff. His behaviour is unwarranted and unjustifiable. A review of the totality of his behavior since commencing proceedings in 2017 shows clear vexatious intent.

[81] In the Decision, the Judge reviewed the record and referenced the other information on which he relied in making his order. The Judge was alive to the doctrine of abuse of process, saying that Mr. Oleynik was tactically abusing the legal system (at para. 64) and that his wilful defiance of court instruction was abuse (at para. 106). It is implicit in his overall reasoning that he rested the Vexatious Litigant Order on his assessment that the record, evidence, and all of the circumstances of the litigation giving rise to Memorial's application showed that Mr. Oleynik was abusing the process of the court. Paragraph 104 of the Decision illustrates:

[104] Courts exist to aid individuals in the resolution of disputes. They are not forums in which litigation is to be conducted for improper purposes. The Court will not allow its mechanisms to be misappropriated to waste limited public resources to the detriment of access to justice. Vexatious litigants do not just harm the parties brought into their orbit. They impede the ability of the Court to give timely attention to meritorious claims and display absolutely no concern for judicial economy or use of other court resources. By denying access to others, the behavior of the abusive litigant fuels public cynicism and undermines trust in the Courts and our justice system, a system every member of our community relies on and is entitled to access. Oleynik, like any litigant is entitled to have his day in court. He is not entitled to come back day after day in a futile pursuit of remedies to which he is not entitled or to conduct litigation for improper purposes.

#### *Conclusion on Mr. Oleynik's Abuse of Process and the Vexatious Litigant Order*

[82] In my view the Judge was correct that Mr. Oleynik's conduct was abuse of the Court process. His relentless filing and prosecuting of myriad prolix interconnected litigations, baseless allegations of wrongful conduct leveled against Memorial's counsel, witnesses, and court staff, defiance of court orders, inappropriate communications with judges and court staff, and failure to bring the many proceedings he initiated to conclusion show unfairness to Memorial, and serious risk to the functioning and repute of the administration of the justice system.

[83] The Judge's review of the record and circumstances of the case was detailed and comprehensive. It has not been shown that he relied on any inappropriate information or that he failed to consider important relevant information. Paragraphs 51-54 of the Decision demonstrate that the Judge was alive to the rationales

informing the imposition of vexatious litigant orders, and that Mr. Oleynik had a right to access the Court, which could not be interfered with lightly. The Judge applied these legal principles to Mr. Oleynik's behaviour and the volume of spurious proceedings he initiated. By any measure, Mr. Oleynik's conduct was of a nature and degree warranting the Vexatious Litigant Order.

[84] At this juncture, I emphasize that it was not Mr. Oleynik as a litigant – simply a plaintiff or an applicant – that was abusive. Rather, it was how he conducted his litigation that was abusive. It was not a matter of a litigant accessing the court to have a cause of action or application considered and decided; rather, it was Mr. Oleynik's relentless filing and persisting with an onslaught of interconnected and repetitive filings, along with his disrespectful and argumentative behaviour, that gave rise to Memorial's application. Had a member of the bar done what Mr. Oleynik did in this case, I have no hesitation in saying that the member would have lost his right of audience and suffered personal costs orders.

### **Mr. Oleynik's alleged factual errors**

[85] Mr. Oleynik alleges that the Judge made factual errors in his decision, and that these errors justify allowing his appeal. In particular, he says (1) that the Judge confused which party actually filed a Rule 38 application on February 2, 2022; (2) that the Judge erred in saying that Mr. Oleynik's attempt to file an originating application without the leave of the Court showed defiance of Court orders; and (3) that Mr. Oleynik corresponded directly with the Judge while the matter was on reserve.

### *Standard of Review*

[86] The standard of review for factual errors is palpable and overriding error (*Housen*, at para. 10).

### *Analysis*

[87] On Mr. Oleynik's first allegation, the record establishes that Mr. Oleynik filed the February 2, 2022, Rule 38 application (Supplemental Appeal Book, Vol. 13, Tab 28). The Judge was correct; he was not confused.

[88] On his second allegation, it is not clear from the record whether Mr. Oleynik used an incorrect form in applying for leave to apply for judicial review of an adjudicator's decision. While the Judge could have been mistaken, even if he was, such a mistake is hardly significant and does not override the Judge's Decision.

[89] On Mr. Oleynik's third allegation, this Court is not able to determine whether he directly communicated with the Judge while the case was on reserve. Even if the Judge erred in making this particular statement, it would have had no meaningful impact on the Decision, given the other instances when Mr. Oleynik communicated directly to judges (Decision, at paras. 40, 45). And, it would have no impact on the appeal given the significant volume of vexatious conduct justifying the order.

### *Conclusion on Alleged Factual Errors*

[90] In summary, none of the alleged factual errors in the Decision meet the palpable and overriding standard of review.

### **Was Mr. Oleynik accorded procedural fairness?**

[91] Mr. Oleynik contends that the Supreme Court did not accord him procedural fairness and that his appeal should be allowed on that basis.

### *Standard of Review*

[92] Breaches of procedural fairness are generally considered to be equivalent to errors of law subject to the correctness standard of review. While they can render a decision invalid, they do not always; it depends on the seriousness of the breach and common law principles respecting whether the error is technical or minor, and whether it results in a miscarriage of justice (*Khosa*, at para. 43; and *O'Keefe v. O'Keefe*, 2019 NLCA 70, at paras. 6-7).

### *Analysis*

[93] The ways in which Mr. Oleynik alleges he was denied procedural fairness are that the Court:

1. Failed to apply the "beyond a reasonable doubt" standard to declaring him a vexatious litigant (Mr. Oleynik's Factum, at paras. 30(b), 30(c), 46, 123, 126, 149);

2. Restricted his oral submissions to two hours (Mr. Oleynik's Factum, at paras. 30(d)(iv), 153(iv), 158, 188-195); and
3. Did not maintain an "even handed standard" by giving the other parties more favourable treatment (Mr. Oleynik's Factum, at paras. 30(d)(v), 153(v), 196-200).

[94] Mr. Oleynik submits that he was owed "procedural fairness ... at the highest end of the spectrum" (Mr. Oleynik's Factum, at para. 152) because (1) the matter involved his employment/professional career (Mr. Oleynik's Factum, at para. 146); and (2) that the employment issues had an effect on the "physical security of [Mr. Oleynik's] family in Ukraine." (Mr. Oleynik's Factum, at para. 147).

[95] There is no question that the Court was obligated to treat Mr. Oleynik fairly. There is also no question that Mr. Oleynik's original litigation arose in the context of his employment. He says that his legal problems started after he raised the issue of integrity of a record pertaining to academic hiring when sitting on the Joint Employment Equity Committee as Memorial's Faculty Association's representative. That said, Mr. Oleynik's employment was not the focus of the vexatious litigant application, and the Supreme Court did not make any ruling respecting it. Neither did Mr. Oleynik argue any legally relevant link between his employment status and the determination of Memorial's vexatious litigant application, and none is apparent. Further, Mr. Oleynik did not argue any link between Memorial's application and the safety of his family in Ukraine.

[96] Mr. Oleynik argues that the high degree of procedural fairness owed to him called for application of the "beyond a reasonable doubt" standard in determining whether he was a vexatious litigant, and that the Judge failed to apply that standard. Mr. Oleynik maintains that the Judge's decision effectively finds him guilty of contempt of court, which requires a hearing and evaluation based on the beyond a reasonable doubt standard (*Squires v. Smith*, 2019 NLCA 54, at para. 14).

[97] The Judge did not cite Mr. Oleynik for contempt of court, or find him guilty of it. The only place the word contempt appears in the Judge's Decision is within his descriptions of other cases (Decision, at paras. 50, 119).

[98] The standard of beyond a reasonable doubt applies to criminal proceedings instituted by the Crown against an accused person, and also to contempt of court proceedings. It has no bearing on this matter. The civil standard of balance of

probabilities applied to the Judge's determination that Mr. Oleynik was a vexatious litigant, and that is the standard of proof the Judge applied.

[99] Mr. Oleynik argues that he was given only two hours to make his submissions on Memorial's vexatious litigant application, and that, in context, this was a breach of procedural fairness.

[100] Mr. Oleynik says that the vexatious litigant application was originally set for five days, but it was ultimately heard in one day. Each of the parties had roughly two hours to make oral submissions. Mr. Oleynik maintains that he ought to have had much more time to make his oral submission because the hearing of the application was originally set for much longer.

[101] I cannot agree with Mr. Oleynik's argument. First, courts are entitled to manage their dockets in proportion to the specific requirements of all cases requiring an audience. In an individual matter, courts are entitled to assess the time required and set it accordingly, and to adjust time requirements as matters proceed.

[102] Second, when the Court heard Memorial's vexatious litigant application, it had already determined that no cross-examination was to take place on the affidavit evidence. That factor alone accounted for a considerable reduction in the original time allotted.

[103] Third, written submissions had been filed by each of the three parties before the hearing. Oral argument is meant to augment written submissions, clarify issues for the court, and address other parties' positions; it is not a stand-alone presentation.

[104] Fourth, Memorial's application did not involve a full merits consideration of each of Mr. Oleynik's litigations. That was not the focus of the application. All of the information necessary to determine whether Mr. Oleynik was a vexatious litigant was in the record before the Court.

[105] Fifth, Mr. Oleynik has not identified any argument that he was prevented from making due to time constraints.

[106] The Court's allotment of two hours for each party to make oral argument to supplement their written submissions was in order. No breach of procedural fairness is established.

[107] Mr. Oleynik argues that Memorial was treated more favorably than he was.

[108] On September 20, 2022, the Supreme Court advised the parties by email that the Court would not accept further “administrative letters”.

[109] On October 11, 2023, Memorial’s counsel sent an e-mail to the Supreme Court registry advising that a judicial decision pertinent to the case had been released in another jurisdiction (Appeal Book, Tab 2, at 46). Mr. Oleynik was copied on the correspondence.

[110] Sometimes counsel seek to provide relevant judicial decisions which are not available when a matter has been heard but not yet decided. It is a courtesy to the court, consistent with a lawyer’s duty of candor.

[111] The correspondence from Memorial’s counsel to the Court was for the purpose of alerting the Court to an appellate decision affirming a trial decision which had been submitted by Memorial in argument to the Court. The appellate decision that had not been available during the hearing was from the Alberta Court of Appeal and concerned Mr. Oleynik. The Court’s acceptance of Memorial’s filing does not show uneven treatment.

[112] Mr. Oleynik also submits that the Court treated him differently than it treated Memorial respecting requests to correct errors in the vexatious litigant decision after it was released.

[113] Mr. Oleynik attempted, by e-mail, to correct what he viewed as errors in the Decision (Mr. Oleynik’s Factum, at para. 199). Mr. Oleynik says that he asked the registry if he was required to file for leave to file a rule 15.07 application, given that he had already been declared a vexatious litigant.

[114] This Court is unable to determine whether Mr. Oleynik received a reply to that email correspondence, and there is no indication in the record that he filed an application for leave to file a rule 15.07 application or a rule 15.07 application.

[115] Mr. Oleynik contrasted his treatment with the Court’s acceptance of a request from Memorial to correct an oversight in the Judge’s order. Memorial’s request was noted in an e-mail:

... Memorial has one concern in relation to the form of the order issued, and that is that it does not reflect the lump sum cost award set out in the Judgment.

If a Rule 15 application is required to correct that omission, Memorial is prepared to attend to same.

(Appeal Book, Tab 2, at 31)

[116] Mr. Oleynik’s position was that if Memorial sought to file a rule 15.07 application, they were required to first seek leave, as well as make a separate *inter partes* application. Then, Mr. Oleynik would “[expect] to have the right to file a response and to make oral submissions” (Appeal Book, Tab 2, at 31).

[117] Memorial’s request involved incorporating an issue that had been decided but inadvertently omitted from the order. This was a simple oversight, fundamentally different from Mr. Oleynik seeking to reargue or change facts determined by the Judge in his decision. Requiring Memorial to file written submissions and hold a hearing in order to correct such a clear oversight would be disproportionate and unnecessary. Its only purpose would be to force additional proceedings and waste resources. Ironically, Mr. Oleynik’s position on this issue illustrates his dogged time-and-resource-wasting approach to conducting his litigation.

[118] Any difference of treatment between the two requests was due to the difference in the substance of the requests, not a difference in the treatment of the parties. In any event, Mr. Oleynik filed a notice of appeal to address his alleged factual errors, which was a proper course of action.

[119] Mr. Oleynik included other allegations of error in his discussion of procedural fairness. He submitted that the Judge (1) deemed (irrelevant) the contested character of Memorial’s decision to terminate Mr. Oleynik’s employment (Mr. Oleynik’s Factum, at para. 148); (2) failed to acknowledge Mr. Oleynik’s efforts to consolidate the proceedings (Mr. Oleynik’s Factum, at paras. 153(i), 155-156, 159-162); and (3) failed to assess the proceedings more thoroughly on an individual basis (Mr. Oleynik’s Factum, at paras. 157-158, 163-164). These allegations are better characterized as analytical errors, not procedural fairness errors.

[120] On the first point, Mr. Oleynik argued that Memorial's Workplace Policy concerning the definition of harassment was changed, and the nature of the change was not provided in a relevant affidavit. The Judge found this argument irrelevant (Cross-Examination Decision, at paras. 30, 32).

[121] Anything that could render a proceeding more likely to be meritorious or relate to the exercise of legal rights, could be relevant to granting or denying a vexatious litigant order. However, I cannot conceive how any difference in these definitions could have meaningfully impacted the Court's assessment of Memorial's vexatious litigant application. I agree with the Judge that the change in policy was irrelevant.

[122] On the second point, the Judge, at paragraph 41 of the Decision, did acknowledge Mr. Oleynik's consolidation application. While his application to consolidate certain matters was commendable, it did not detract from the significant vexatious conduct which the Judge relied on to make the Vexatious Litigant Order.

[123] On the third point, it is so that the Judge did not analyze the merits of every proceeding Mr. Oleynik filed. However, throughout the Decision, and particularly at paragraphs 13-48 and 86, the Judge provided detailed reviews of much of the litigation initiated by Mr. Oleynik. He assessed the nature of Mr. Oleynik's various litigations, the circumstances under which they were undertaken, their results, and the types of rulings that were made on them, in a similar manner to that described by Green C.J. (NLSC), as he then was, in *Brace*.

[124] In deciding a vexatious litigant application, a judge is not required to determine the merits of each proceeding implicated in a full hearing. Rather, reviewing the litigation for discernable merit is sufficient. In this case, the Judge considered the nature of the outstanding proceedings to the extent necessary to determine Memorial's application.

#### *Conclusion on Procedural Fairness*

[125] In the result, Mr. Oleynik has not demonstrated procedural unfairness or analytical error.

## **SUMMARY AND DISPOSITION**

[126] In summary, the Judge did not err in relying on the Court's inherent jurisdiction to declare Mr. Oleynik a vexatious litigant and restrict his access to the Supreme Court. The Judge appreciated the absence of statutory authority to address the abuse of the Court's process that had spiraled out of control, and properly grounded his authority to make a vexatious litigant order in the murky waters of inherent jurisdiction because it was necessary to do so.

[127] In declaring Mr. Oleynik vexatious, the Judge based his decision on a holistic and contextual review of the proceedings prosecuted by Mr. Oleynik, and correctly found that Mr. Oleynik's conduct was an abuse of the Court's process. The Judge acknowledged and applied the relevant legal principles and concluded that the nature and degree justified the Vexatious Litigant Order he imposed. The order represented the culmination of an extensive record showing abuse, failed attempts at managing the proceedings informally, a defendant heavily burdened by the weight of questionable litigation, Mr. Oleynik's numerous unfounded allegations of impropriety, and his disregard for the proportionate allocation of judicial resources. Moreover, Mr. Oleynik has not established any legal, procedural, factual, or analytical error that would justify this Court overturning the Judge's Decision.

[128] In the result, I would dismiss Mr. Oleynik's appeal.

## **COSTS**

[129] I would order Column 3 costs payable by Mr. Oleynik to Memorial. There is no cost award for or against the Information and Privacy Commissioner. Although we did not find in his favor, Mr. Oleynik's research and arguments on appeal with respect to the relatively novel question of the operation of inherent jurisdiction to issue a vexatious litigant order were appreciated by the Court.

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L.R. Hoegg J.A.

I concur: \_\_\_\_\_

W.H. Goodridge J.A.

I concur: \_\_\_\_\_

K.J. O'Brien J.A.

**APPENDIX**

**2021 01G 4960  
IN THE SUPREME COURT OF NEWFOUNDLAND AND LABRADOR  
GENERAL DIVISION**

BETWEEN:

MEMORIAL UNIVERSITY OF  
NEWFOUNDLAND

APPLICANT

AND:

ANTON OLEYNIK

RESPONDENT

AND:

MICHAEL HARVEY, IN HIS CAPACITY  
AS THE INFORMATION AND PRIVACY  
COMMISSIONER OF NEWFOUNDLAND  
AND LABRADOR

INTERVENOR

**VEXATIOUS LITIGANT ORDER**

**IT IS HEREBY ORDERED THAT** Anton Oleynik, having been declared a vexatious litigant must seek leave of the Court to continue with any appeal, application, or proceeding before the Court or to commence any further appeal, application, or proceeding in this Court, either on his own behalf or on the behalf of any other person, estate, or entity.

**IT IS FURTHER ORDERED THAT**

1. Anton Oleynik must describe himself in any application for leave or document to which this Order applies as “Anton Oleynik”, and not by using initials, an alternative name structure, or a pseudonym.
2. To commence a further proceeding or continue with any proceeding in this Court:
  - (a) Anton Oleynik shall submit an Application for Leave to a Justice of the Supreme Court of Newfoundland and Labrador. The Justice may, at any time,

direct that notice of an application for leave to commence or continue an appeal, application, or proceeding be given to any other person.

(b) The Application for Leave shall be in writing and shall not exceed ten pages double-spaced, and shall not contain any attachments other than the affidavit described in paragraph c.

(c) Any Application for Leave to commence or continue any appeal, application, or proceeding shall be accompanied by an affidavit:

- i. attaching a copy of this Order restricting Anton Oleynik's access to the Supreme Court of Newfoundland and Labrador;
- ii. attaching a copy of the appeal, pleading, application or process that Anton Oleynik proposes to issue, file or continue;
- iii. deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it;
- iv. indicating whether Anton Oleynik has ever commenced any legal action or proceeding against any or all of the Defendants, Respondents, Intervenors or any other party in this Court or in any jurisdiction or court, and, if so, providing full particulars;
- v. disclosing all costs awards made against Anton Oleynik in any proceedings in this Court or in any jurisdiction involving the Defendants, Respondents, Intervenors or any other party and confirming that all such costs awards in any proceeding not under appeal have been paid;
- vi. undertaking that, if leave is granted:
  1. the authorized pleading, application or process, the Order granting leave to proceed, and the affidavit in support of the Order will promptly be served on the defendants or respondents; and
  2. the proceeding will be diligently prosecuted.

- vii. the affidavit shall have no attachments other than those referenced in this part.
3. The judge considering the Application for Leave may, **but shall not be obliged to:**
  - (a) give notice of the proposed claim or proceeding and the opportunity to make submissions on the proposed claim or proceeding, if they so choose, to:
    - i. the potential parties; and to;
    - ii. other relevant persons identified by the Court; which may include but are not limited to the Attorney-General of Newfoundland and Labrador and/or the Attorney-General of Canada.
  - (b) hold the application in open Court where it shall be recorded.
  - (c) dispose of the leave application in writing by Endorsement which may be circulated to;
    - i. the potential parties; and to;
    - ii. other relevant persons identified by the Court; which may include but not limited to the Attorney-General of Newfoundland and Labrador and/or the Attorney-General of Canada; and
4. Leave to commence or continue proceedings may be given on conditions, including the posting of security for costs, and proof of payment of all prior costs awards.
5. An Application for Leave that is dismissed may not be made again directly, or indirectly.
6. Anton Oleynik is prohibited from:
  - (a) Providing legal advice or preparing documents intended to be filed in court for any person other than himself, and filing or otherwise communicating with the court, except on his own behalf; and

- (b) Acting as an agent, next friend, McKenzie Friend or any other form of representative in court proceedings before the Supreme Court of Newfoundland and Labrador.
7. The staff of the Supreme Court of Newfoundland and Labrador at the Registries in all court centres throughout the Province, and for greater certainty, at the Registries in St. John's, Grand Bank, Gander, Grand Falls-Windsor, Corner Brook and Happy Valley-Goose Bay, shall be advised of these conditions and shall discard any documents or other materials from the Applicant, unless they comply with the directions set out herein.
  8. Anton Oleynik shall continue to have reasonable access to the Court's registries by appointment but only following the provision in writing to the Court's Registrar detail of the inquiry and purpose. The Court's Registrar shall have full discretion to approve or deny Oleynik a Registry appointment. In the event a request is denied, Oleynik may not make the same or substantially similar request for a period of six months.
  9. Anton Oleynik shall only communicate with the Court through email directly to **supcourtinquiries@supreme.court.nl.ca**. All other forms of communication by Oleynik to the Court shall be disregarded by the Court.

**DATED** at St. John's, in the Province of Newfoundland and Labrador, this 14<sup>th</sup> day of March, A.D. 2024.

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