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

Citation: *Oleynik v. Newfoundland and Labrador (Labour Relations Board)*, 2026 NLCA 31
Date: August 28, 2026
Docket Number: 202401H0059

BETWEEN:

ANTON OLEYNIK

APPLICANT/APPELLANT

AND:

LABOUR RELATIONS BOARD OF NEWFOUNDLAND AND LABRADOR

FIRST RESPONDENT

AND:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND FACULTY ASSOCIATION

SECOND RESPONDENT

AND:

MEMORIAL UNIVERSITY OF NEWFOUNDLAND

THIRD RESPONDENT

Coram: F.P. O'Brien, W.H. Goodridge and K.J. O'Brien JJ.A.

Court Appealed From:	Supreme Court of Newfoundland and Labrador, General Division 202401G4124
Appeal Heard:	June 12, 2026
Judgment Rendered:	August 28, 2026
Reasons for Judgment by:	K.J. O'Brien J.A.
Concurred in by:	F.P. O'Brien and W.H. Goodridge JJ.A.
Counsel for the Applicant/Appellant:	Self-Represented
Counsel for the First Respondent:	Megan S. Reynolds
Counsel for the Second Respondent:	James R. Farrell
Counsel for the Third Respondent:	Darren C. Stratton

Authorities Cited:

CASES CITED: *In the matter of an application pursuant to s. 130 of the Labour Relations Act affecting Dr. Anton Oleynik and MUNFA and MUN*, 2023 NLLRB No 20; *In the matter of an application pursuant to s. 130 of the Labour Relations Act affecting Dr. Anton Oleynik and MUNFA and MUN*, 2024 NLLRB No 1; *In the matter of an application pursuant to s. 22 of the Public Interest Disclosure and Whistleblower Protection Act affecting Dr. Anton Oleynik and MUN*, 2024 NLLRB 2; *Memorial University of Newfoundland v. Oleynik*, 2024 NLSC 42; *Oleynik v. Memorial University of Newfoundland*, 2025 NLCA 22, leave to appeal to SCC refused, 41868 (4 December 2025); *Palmer v. The Queen*, [1980] 1 S.C.R. 759; *Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517; *Canada v. Olumide*, 2017 FCA 42; *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31; *Yashcheshen v. Allergan Inc.*, 2021 SKQB 33; *Gichuru v. Purewal*, 2023 BCCA 345, leave to appeal to SCC refused, 40988 (18 April 2024); *6517633 Canada Ltd. v. Clews Storage Management KEHO Ltd.*, 2026 SKCA 42; *Penney v. Newfoundland and Labrador*, 2020 NLSC 46, aff'd 2021 NLCA 35; *Olumide v. Thompson Reuters*, 2019 ONSC 997; *Lindhorst v. Centennial College*, 2016 ONSC 2678; *Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48, [2022] 3 S.C.R. 515; *Cabana v. Wells*, 2024 NLCA 4; *Unifor Local 2002 v. Exploits Valley Air Services Ltd.*, 2023 NLCA 3; *Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509.

STATUTES CONSIDERED: *Federal Courts Act*, RSC 1985, c. F-7, section 40(4); *Ontario Courts of Justice Act*, RSO 1990, c. C. 43, section 140(4); *Judicature Act*, RSNS 1989, c. 240, section 45D(1); *Judicature Act*, RSPEI 1988, c. J-2.1, section 65(3)(a); *The Court of King's Bench Act*, CCSM, c. C280, section 74(2); *The Court of Appeal Act*, CCSM, c. C240, section 31.2(3); *Judicature Act*, RSA 2000, c. J-2, section 23.1(7); *Supreme Court Act*, RSY 2002, c. 211, section 7.1(3)(b); *Court of Appeal Act*, RSY 2002, c. 47, section 12.1(3)(b); *Judicature Act*, RSNWT 1988, c. J-1, sections 14.1(3)(a), 21(3)(a); *Judicature Act*, CSNu, c. J-10, section 51.4(1); *Labour Relations Act*, RSNL 1990, c. L-1, section 130(1); *Public Interest Disclosure and Whistleblower Protection Act*, SNL 2014, c. P-37.2; *Canadian Charter of Rights and Freedoms*.

RULES CONSIDERED: *Court of Appeal Civil Rules, 2025*, NLR 44/25, rule 37(3); New Brunswick, *Rules of Court*, rules 76.1.02(4), 76.1.03(4); *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, rule 14.24.

K.J. O'Brien J.A.:

[1] This is an appeal of a decision, made pursuant to a vexatious litigant order, to deny the Appellant leave to commence judicial review of three decisions of the Labour Relations Board (the "LRB").

OVERVIEW

[2] Anton Oleynik filed an application in the Supreme Court of Newfoundland and Labrador for leave to commence judicial review of three decisions of the LRB:

- A decision dismissing Mr. Oleynik's complaint against his union, Memorial University of Newfoundland Faculty Association ("MUNFA"), for breach of its duty of fair representation (Order dated March 31, 2023, reasons given on request November 20, 2023, *In the matter of an application pursuant to s.130 of the Labour Relations Act affecting Dr. Anton Oleynik and MUNFA and MUN*, 2023 NLLRB No 20 ("*DFR Decision 1*"));

- A decision dismissing Mr. Oleynik's second complaint against MUNFA for breach of its duty of fair representation (Order dated August 4, 2023, reasons given on request January 4, 2024, *In the matter of an application pursuant to s 130 of the Labour Relations Act* *affecting Dr. Anton Oleynik and MUNFA and MUN*, 2024 NLLRB No 1 (“*DFR Decision 2*”)); and

- A decision dismissing Mr. Oleynik’s complaint against Memorial University of Newfoundland (“Memorial”) for reprisals taken against him contrary to legislation that protects whistleblowers (Order dated August 4, 2023, reasons given on request January 4, 2024, *In the matter of an application pursuant to s. 22 of the Public Interest Disclosure and Whistleblower Protection Act affecting Dr. Anton Oleynik and MUN*, 2024 NLLRB 2 (“*Reprisals Decision*”)).

[3] Prior to seeking leave from the Supreme Court for judicial review, Mr. Oleynik had applied to the LRB for reconsideration of each of the three decisions. The LRB dismissed his applications for reconsideration.

[4] Mr. Oleynik had to seek leave to commence judicial review of the decisions because he is subject to a vexatious litigant order made by the Supreme Court on March 14, 2024 (*Memorial University of Newfoundland v. Oleynik*, 2024 NLSC 42 (“*Vexatious Litigant Decision*”), affirmed in *Oleynik v. Memorial University of Newfoundland*, 2025 NLCA 22 (“*NLCA Vexatious Litigant Decision*”), leave to appeal to SCC refused, 41868 (4 December 2025)).

[5] The vexatious litigant order requires that Mr. Oleynik seek leave before continuing or commencing any litigation in the Supreme Court. It further requires that his application for leave be accompanied by an affidavit “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”.

[6] The judge who reviewed Mr. Oleynik’s application for leave denied it, giving brief reasons for doing so in the form of an endorsement (Appeal Book, Tab 3, at pp. 20-22 (the “Endorsement”)). The judge’s reasons are primarily expressed in the following passages from the Endorsement:

> The factual narrative of Oleynik’s abusive practices outlined in the [*Vexatious Litigant Decision*] as against Memorial further continues with this leave application and intended application for judicial review, rooted in Oleynik’s obsessive and abusive practice engaging Memorial, which abusive practices fundamentally grounded the Vexatious Litigant Order

> (See: findings of facts, paragraph 106). This present leave application and intended judicial review are a continuation of Oleynik's abuse of court processes. As stated in paragraph 59 of the [*Vexatious Litigant Decision*], conducting relentless litigation suggest that the originating action is motivated by *mala fides* as against the other party and further at paragraph 79, a consequence of vexatious conduct is to call every action of the litigant into question as to its legitimacy of purpose.
>
> The present application does not comply with the Vexatious Litigant Order in a number of material respects, including failure to depose of facts and circumstances surrounding the proposed proceeding that demonstrates the proceeding is not an abuse of process.

[7] Mr. Oleynik now appeals the Endorsement. His grounds of appeal raise the following issues:

1. Did the judge err in determining that he was not satisfied that Mr. Oleynik's proposed judicial reviews were not an abuse of process?

2. Did the Supreme Court err by unreasonably delaying the exercise of its inherent jurisdiction to consider a request for a case management meeting?

3. Did the judge err by showing a closed mind on the arguments advanced and the evidence produced by Mr. Oleynik?

4. Did the judge exceed his jurisdiction by going beyond the restrictions imposed by the vexatious litigant order?

5. Did the judge err by failing to identify and apply a test for establishing *mala fides* motivation?

[8] I would dismiss the appeal. Based on the material before him, the judge was entitled to find that Mr. Oleynik had not demonstrated that the intended judicial review applications were not an abuse of process and, rather, were rooted in Mr. Oleynik's obsessive and abusive practice engaging Memorial. The judge made no legal error or palpable and overriding factual error. Nor did the judge otherwise err in the exercise of his discretion. Although the reasons given in the Endorsement

are brief, they explain the judge's basis for denying leave and no injustice has been shown that would justify this Court interfering with his decision.

[9] Before elaborating further, I will address Mr. Oleynik's two applications to admit additional evidence on appeal.

APPLICATIONS TO ADMIT ADDITIONAL EVIDENCE

[10] When a party seeks to introduce additional evidence on appeal, the test in *Palmer v. The Queen*, [1980] 1 S.C.R. 759, applies. The test ensures that the admission of additional evidence on appeal will be rare, such that the matters in issue between the parties should narrow rather than expand as a case proceeds up the appellate ladder (*Barendregt v. Grebliunas*, 2022 SCC 22, [2022] 1 S.C.R. 517, at paras. 30-34).

[11] The test is codified in rule 37(3) of the *Court of Appeal Civil Rules, 2025*, NLR 44/25, which gives a non-exhaustive list of considerations the Court must consider in determining whether additional evidence should be admitted. Of the considerations, two are determinative in this case: (i) the relevance of the evidence in the sense that it bears upon a decisive or potentially decisive issue in the appeal, and (ii) whether the evidence, if believed, could reasonably have affected the result.

[12] In his first application, Mr. Oleynik seeks to introduce documents related to the hiring of a special advisor in October 2024 to support the operations of the LRB. Mr. Oleynik submits that the documents establish, on a balance of probabilities, that the special advisor was involved in making the decisions Mr. Oleynik seeks to have judicially reviewed. The documents do not establish this. The three decisions had all been made prior to the special advisor being hired. Although the LRB provided its reasons for two of Mr. Oleynik's reconsideration applications after the hiring, the documents do not show that the special advisor was involved in making those decisions. The documents are not relevant to the present appeal. Neither are the email communications from Mr. Oleynik to the Supreme Court or to the LRB that are also included with this application.

[13] Mr. Oleynik's second application seeks to amend the Appeal Book by adding twenty-two documents, only some of which Mr. Oleynik considers to be "new" evidence on the appeal. Regardless of how the application is framed, I would not admit the documents or allow the Appeal Book to be amended to add

them because they are not relevant to Mr. Oleynik's appeal of the Endorsement and would not have affected the judge's decision to deny leave.

[14] The first group of documents relates to copies of the Appeal Book and Mr. Oleynik's factum in the present matter that were sent to the Supreme Court by an unidentified person. The documents were received by the Supreme Court after Mr. Oleynik filed the Appeal Book and his factum in this Court. There is no evidence that the copies differ in any substantive way from the originals. The copies were not filed in this Court and were not provided to the panel. They have no relevance to the resolution of this appeal.

[15] The next group of documents relates to the practicing status of two lawyers, one of whom was previously counsel on this file and the other of whom is currently counsel on this file. The documents have no relevance to the resolution of this appeal. At all relevant times, the lawyers were eligible to appear as lawyers before this Court.

[16] The next group of documents is news articles, written in Ukrainian, which Mr. Oleynik states relate to damage to buildings by Russian drones and missiles near his father's home in Ukraine. The documents have no relevance to the resolution of this appeal.

[17] The next group of documents is correspondence between Mr. Oleynik and the Royal Newfoundland Constabulary related to an investigation of Mr. Oleynik's complaint of the alteration of records. The documents have no relevance to the resolution of this appeal.

[18] The final group of documents is emails from the LRB sent to Mr. Oleynik attaching orders and correspondence. The validity of the orders is not in question and the timing of Mr. Oleynik's receipt of the orders has no bearing on the outcome of the appeal. The documents are not relevant.

[19] As a result, I would dismiss both applications to admit additional evidence. Further, I would dismiss Mr. Oleynik's request to strike all or some of the factums filed by the other parties, which he included in his application to amend the Appeal Book. There is no persuasive reason to strike the factums.

PURPOSE AND RATIONALE FOR VEXATIOUS LITIGANT ORDERS

[20] It is helpful to begin with a discussion of vexatious litigant orders. A brief overview will suffice because this Court recently reviewed vexatious litigant orders at length in the *NLCA Vexatious Litigant Decision*. I will merely highlight parts of that decision.

[21] A vexatious litigant order declares a litigant to be vexatious and restricts that person's access to the court or courts. Declaring a person to be a vexatious litigant is a serious legal ruling because it restricts that person's access to justice. Litigants, including vexatious litigants, have a constitutional right to access superior courts to have their disputes resolved (*NLCA Vexatious Litigant Decision*, at paras. 23, 33).

[22] This is why it is important that vexations litigant orders do not bar a person's access to the court. Instead, such orders regulate that access by requiring that the person obtain leave before starting or continuing a legal proceeding. It must be remembered that there is no constitutional right to bring frivolous or vexatious cases, and measures that deter such cases may increase efficiency and overall access to justice (*NLCA Vexatious Litigant Decision*, at paras. 35, 37, quoting from *Canada v. Olumide*, 2017 FCA 42, at para. 27 and *Trial Lawyers Association of British Columbia v. British Columbia (Attorney General)*, 2014 SCC 59, [2014] 3 S.C.R. 31, at para. 47).

[23] How such measures may increase efficiency and improve access to justice becomes apparent when we consider the two recognized rationales for vexatious litigant orders. The first rationale is to protect other litigants, who otherwise would be "forced to respond to prolix, relentless, and oppressive litigation that targets, harasses, or insults them, and that has little to no legitimate purpose". The harm to these other litigants can be both personal and professional, and may involve extensive financial and time commitments. To allow such harm to persist unchecked would undermine courts as neutral arbiters of disputes and undermine public respect for the administration of justice (*NLCA Vexatious Litigant Decision*, at para. 39).

[24] The second rationale is to protect the ability of courts to carry out their work in a fair, orderly and efficient manner, in accordance with the rule of law. Court resources are finite, and all users should have timely, proportionate, and fair access to them. This will not happen if courts are "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" (*NLCA Vexatious Litigant Decision*, at para. 40).

LEAVE APPLICATIONS UNDER VEXATIOUS LITIGANT ORDERS

[25] This Court has not previously considered the issue of leave under a vexatious litigant order. Because this province has no legislation addressing vexatious litigants, there is no statutory framework governing applications for leave of this nature.

[26] Statutory provisions exist in other jurisdictions. For example, section 40(4) of the *Federal Courts Act*, RSC 1985, c. F-7, provides that the court may grant leave "if it is satisfied that the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding". Similar legislative provisions, requiring that the proposed litigation is "not an abuse of process" and that "there are reasonable grounds for the proceeding", are found in other jurisdictions (see *Ontario Courts of Justice Act*, RSO 1990, c. C. 43, at s. 140(4); *Judicature Act*, RSNS 1989, c. 240, at s. 45D(1); *Judicature Act*, RSPEI 1988, c. J-2.1, at s. 65(3)(a); *The Court of King's Bench Act*, CCSM, c. C280, at s. 74(2); *The Court of Appeal Act*, CCSM, c. C240, at s. 31.2(3); *Judicature Act*, RSA 2000, c. J-2, at s. 23.1(7); *Supreme Court Act*, RSY 2002, c. 211, at s. 7.1(3)(b); *Court of Appeal Act*, RSY 2002, c. 47, at s. 12.1(3)(b); and *Judicature Act*, RSNWT 1988, c. J-1, at ss. 14.1(3)(a), 21(3)(a); *Judicature Act*, CSNu, c. J-10, at s. 51.4(1)). In New Brunswick, the rules of court provide the equivalent test (*Rules of Court*, at rs. 76.1.02(4), 76.1.03(4)).

[27] Even without legislative guidance, in *Yashcheshen v. Allergan Inc.*, 2021 SKQB 33, the Saskatchewan Court of King's Bench adopted the same two-part test to decide if a vexatious litigant should be granted leave. In considering whether the proposed litigation was "an abuse of process" or whether there "were reasonable grounds" for it, the court applied the same criteria as used under that court's rules for striking pleadings that disclose no reasonable claim or defence; are scandalous, frivolous or vexatious; or are otherwise an abuse of process.

[28] The approach in *Yashcheshen,* which focused on the sufficiency of the proposed pleadings, was not followed in *Gichuru v. Purewal*, 2023 BCCA 345, leave to appeal to SCC refused, 40988 (18 April 2024). In *Gichuru*, the British Columbia Court of Appeal preferred a broader, contextual approach that considers more than the pleadings. It endorsed a framework whereby a judge starts by

considering the terms of the vexatious litigant order and the purposes underlying it. The court wrote, "[i]n interpreting the bounds of the discretion that the order confers, the judge must consider both the language of the order and the concerns that it is intended to address" (at para. 34).

[29] In deciding how to exercise that discretion, the court in *Gichuru* held that a judge is entitled to consider the totality of the circumstances, including, a persistent failure to pay costs (at paras. 40, 47-48), the economics of pursuing the claim (at paras. 40, 49), the strength of the claim (at para. 49), the potential that the proceeding will waste court resources and serve to harass litigants (at para. 46), the *bona fide* nature of the claim, its importance to the parties (at paras. 47-48), and whether a serious injustice might result from a failure to grant leave (at para. 49).

[30] Recently, in *6517633 Canada Ltd. v. Clews Storage Management KEHO Ltd.*, 2026 SKCA 42, the Court of Appeal for Saskatchewan recognized the difference in approach between *Yashcheshen* and *Gichuru*. However, the court ultimately declined to determine whether the *Yashcheschen* test should be revisited, in part because the result in the case before it would have been the same using either approach (see paras. 16-17).

[31] Prior to the present matter, whether leave should be granted to a vexatious litigant has only been considered in one reported case in this province. In *Penney v. Newfoundland and Labrador*, 2020 NLSC 46, aff'd 2021 NLCA 35, the judge adopted the two-part test set out above and applied it taking guidance from how the test had been applied in Ontario, particularly in *Olumide v. Thompson Reuters*, 2019 ONSC 997, and *Lindhorst v. Centennial College*, 2016 ONSC 2678. These Ontario cases went beyond reviewing the proposed pleadings. They considered the history of the vexatious litigant and whether the applicant could demonstrate an evidentiary basis for the relief claimed.

How Should Leave Applications be Decided in this Province?

[32] I agree with the court in *Gichuru* that the analysis should start with the vexatious litigant order and the harm that it is intended to address.

[33] In the present case, the vexatious litigant order incorporated the two-part test, by specifically requiring that the leave application provide fully and completely the facts and circumstances surrounding the proposed proceeding, so as

to “demonstrate that the proceeding is not an abuse of process, and that there are reasonable grounds for it”.

[34] Even if it had not been incorporated in the vexatious litigant order, I would find the two-part test to be appropriate. It has been adopted in most other Canadian jurisdictions, and it focuses on the central problems of vexatious litigants.

[35] In the present case, the vexatious litigant order placed the onus on Mr. Oleynik to show that the two-part test was met. If the vexatious litigant order had not articulated an onus, I would still find that the onus is on the applicant. A person is made subject to a vexatious litigant order because a court has concluded that their past litigation conduct has been vexatious and is predictive of their future conduct (*Yashcheshen*, at paras. 16-17; and *6517633 Canada Ltd.,* at para. 11). The leave requirement helps shield other litigants from the harm that vexatious litigation causes. As such, the burden of proving that leave should be granted is appropriately on the applicant.

[36] Granting leave is a discretionary decision. In exercising that discretion, courts must balance the applicant’s right to access the court against the harms caused by vexatious litigation. As already noted, access to the courts is a constitutionally protected right, and so the threshold for access must not be set so high that leave is illusory. Vexatious litigant orders are not a bar to future litigation; they are a constraint.

[37] As to what considerations will be relevant to the analysis, a broad and contextual approach, such as adopted in *Gichuru*, best captures the particular circumstances of vexatious litigants. Vexatious litigants seeking leave come before the court with a litigation history and a record of problematic behaviors. In that way, they are unlike other litigants.

[38] Rule 14.24 of the *Rules of the Supreme Court, 1986*, SNL 1986, c. 42, Schedule D, governs the striking of pleadings. Although jurisprudence developed under that rule may be instructive, a narrow application of that law might fail to consider concerns arising from an applicant’s specific situation as a vexatious litigant. The following non-exhaustive list of considerations, drawn from the existing jurisprudence, includes factors beyond the proposed pleadings that may be relevant to the analysis:

- Whether the materials filed by the applicant satisfy requirements set out in the vexatious litigant order.

- The litigation history of the applicant, including any patterns of behavior that led to the vexatious litigant order. As noted in *Canada v. Olumide*, "[v]exatiousness comes in all shapes and sizes" (at para. 32). For example, sometimes the applicant's purpose in bringing claims previously has been to harass, threaten or embarrass another party, or has otherwise been deemed improper. Other times, it is the way the applicant has previously pursued litigation that has been problematic. The applicant may have a history of bringing multiple and needless applications, filing incomprehensible documents, or attempting to relitigate issues that have already been decided. In assessing leave, a judge should consider whether the proposed claim appears to be a continuation of problematic patterns or more of a fresh start, with no obvious or known connection to the vexatious history.

- The merits of the claim. If it is plain and obvious that the proposed pleading discloses no reasonable claim, then the decision to deny leave will be easily made. However, even if it is not clear that the claim will fail, the strength of the claim may still be considered. Both the proposed pleading and any supporting facts or evidence provided by the applicant can be assessed. If the intended litigation is an appeal or judicial review of matters which have already been adjudicated, the existing record may be consulted to assess the prospects of the intended appeal or review.

- The economics of the claim. Vexatious litigation squanders public and private resources as the justice system and the responding litigants are required to spend time and money bringing the case to a conclusion. Although access to the courts is not governed by a simple calculation, a judge may consider whether the applicant's desired result justifies the costs (time, money, other resources) of the litigation.

- Whether the applicant has costs awards outstanding.

- The importance of the matter to the applicant. While the applicant will invariably view their claim as important, the reviewing judge must

> objectively assess that importance and ensure that no serious injustice would be caused if the leave application was not allowed.

THE JUDGE'S DECISION TO REFUSE LEAVE

[39] Having set out the applicable framework, I turn next to the decision under appeal.

[40] The judge's reasons for denying leave were brief. However, this does not mean that they were insufficient. One of the purposes of vexatious litigant orders is to prevent wasting limited court resources. Requiring lengthy reasons when denying leave would be counterproductive to that goal. In *Gichuru*, the British Columbia Court of Appeal held that courts are entitled to give brief reasons in such cases, stating that where those reasons provide a clear indication of the judge's basis for denying leave, they are adequate (at para. 53). I agree.

[41] Despite its brevity, the Endorsement explains why the judge denied Mr. Oleynik's application. Mr. Oleynik filed his proposed originating application with the Supreme Court as part of his leave application (Appeal Book, Tab 7, at pp. 198-210 (the "Proposed Originating Application")). The judge was not satisfied that the Proposed Originating Application was not an abuse of process.

[42] To the contrary, he found that it was a continuation of Mr. Oleynik's obsessive and abusive practices that had been considered at length in the *Vexatious Litigant Decision*. While not listing those practices, the judge referred to the specific paragraph of the *Vexatious Litigant Decision* which listed the problematic behavior that resulted in the vexatious litigant order. In the Endorsement itself, the judge highlighted Mr. Oleynik's focus on Memorial, his abuse of court processes, and the problem of relentless litigation. The judge found that Mr. Oleynik's application did not comply with the vexatious litigant order, noting specifically that it failed to depose of facts and circumstances surrounding the proposed proceeding that demonstrates the proceeding is not an abuse of process.

ANALYSIS

Issue 1: Did the judge err in determining that he was not satisfied that Mr. Oleynik's proposed judicial reviews were not an abuse of process?

[43] Granting leave is a discretionary decision and so this Court cannot intervene

in the judge's decision unless he erred in law, made a palpable and overriding factual error, or failed to exercise his discretion judicially (which includes acting arbitrarily or being "so clearly wrong as to amount to an injustice") (*Canada (Transportation Safety Board) v. Carroll-Byrne*, 2022 SCC 48, [2022] 3 S.C.R. 515, at para. 41; *Cabana v. Wells*, 2024 NLCA 4, at para. 10).

[44] The judge did not make any legal error. Although he did not explicitly identify the two-part test, he appropriately focused on the first part of that test, whether the proposed litigation was an abuse of process.

[45] Nor did the judge make any palpable or overriding error when he found that Mr. Oleynik had not established that the Proposed Originating Application was not an abuse of process. I will explain why.

[46] The Proposed Originating Application did not engage with the LRB decisions on their merits. A brief review of those merits will help illustrate this point.

[47] The duty of fair representation is codified in section 130(1) of the *Labour Relations Act*, RSNL 1990 c. L-1, and requires that a union not act in a matter that is arbitrary, discriminatory, or in bad faith in the handling of a grievance. Case law interpreting that section has held that an employee does not have an absolute right to arbitration and gives the union considerable discretion in handling a grievance (*Canadian Merchant Service Guild v. Gagnon et al.*, [1984] 1 S.C.R. 509). In both *DFR Decision 1* and *DFR Decision 2*, the LRB dismissed Mr. Oleynik's complaints because it determined that MUNFA had not acted in a manner that was arbitrary, discriminatory or in bad faith in the handling of Mr. Oleynik's grievances.

[48] The *Reprisals Decision* was decided based on jurisdiction. The LRB found that the *Public Interest Disclosure and Whistleblower Protection Act*, SNL 2014, c. P-37.2, which Mr. Oleynik relied upon to found his complaint, did not apply to Memorial and thus the LRB had no jurisdiction to grant the relief requested.

[49] The Proposed Originating Application did not address the LRB's reasons for rejecting his complaints or claim that the decisions were unreasonable. Instead, the Proposed Originating Application focused on (1) matters that were not relevant to the LRB decisions, and (2) issues of procedural fairness related to the LRB decisions. Only the second of these broad categories could form the basis of a

legitimate judicial review. The first category merely demonstrated a continuation of the problematic behavior that led to Mr. Oleynik being declared a vexatious litigant.

[50] In the Endorsement, the judge noted Mr. Oleynik's obsessive behavior, his relentless litigation, and his focus on Memorial as hallmarks of Mr. Oleynik's vexatious behavior. These elements were all evident in the Proposed Originating Application. I will give examples.

[51] The *DFR Decisions* were about MUNFA's handling of Mr. Oleynik's grievances and the *Reprisals Decision* was about the applicability of the whistleblower legislation. None of the decisions examined or turned on Memorial's decision to terminate Mr. Oleynik's employment. Yet, the Proposed Originating Application addresses his termination from Memorial at considerable length, advancing Mr. Oleynik's position regarding why he was terminated.

[52] The Proposed Originating Application contains numerous allegations against Memorial, most or all of which Mr. Oleynik has made in other court proceedings, which are irrelevant to the LRB decisions. The following paragraph is illustrative of this aspect of the draft pleading:

> 5. [Memorial] responded by retaliatory actions and reprisals denying at the same time access to the information pertaining to progressive discipline or altering some records responsive to the Applicant's access to information requests. One of the incidents of apparent alteration of government records was disclosed to the Royal Newfoundland Constabulary (the 'RNC'). By damaging, mutilating, or destroying a government record or removing or withholding a government record from the possession of a public body one commits a quasi-criminal offense. The RNC's investigation is ongoing.

(Footnote omitted.)

[53] At paragraph 106 of the *Vexatious Litigant Decision*, cited in the Endorsement, the list of vexatious behaviors found by the court include:

- Mr. 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;

- Mr. 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;

- Mr. 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; and

- Mr. 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.

[54] All of these behaviors are continued in the Proposed Originating Application, which cross-references five other legal actions commenced by Mr. Oleynik and includes thinly veiled accusations of conspiracy and misconduct, targeting specific individuals. For example, the draft pleading alleges that MUNFA's decision not to proceed with the grievances was preceded by a meeting of its representatives, including its president, with the Minister of Education about there being a faculty representative on Memorial's Board of Regents. Mr. Oleynik noted that the MUNFA president was appointed to the Board of Regents shortly after. The unsupported suggestion implicit in these allegations does not bear upon the reasonableness of the LRB's decisions or whether the procedure before the LRB was fair.

[55] Notably, Mr. Oleynik did not address procedural fairness before the LRB until the seventh page of the Proposed Originating Application. And, although the LRB was required to treat Mr. Oleynik in a procedurally fair manner, there is little alleged in the Proposed Originating Application that, even if ultimately accepted by the court, would support a finding of a breach of the duty of procedural fairness and justify setting aside the decisions. For example, Mr. Oleynik alleges delay in convening a panel to determine the first DFR complaint, the LRB's decision not to redact his name from its reasons, the fact that the LRB did not appoint an investigating officer for his complaints, and that his complaints did not go through a mediation process.

[56] Other allegations about the LRB's procedure raised in the Proposed Originating Application are quite clearly a continuation of the behavior that has led Mr. Oleynik to be declared a vexatious litigant. For example, the *Reprisals*

Decision included as a schedule a reproduction of facts Mr. Oleynik alleged against Memorial and MUNFA on the Reprisals Complaint Form he had submitted to the LRB. In his draft pleading, Mr. Oleynik takes the simple matter of the schedule, which was properly attributed to its source in the *Reprisals Decision*, and alleges unacknowledged "manipulations with the record" by the LRB, linking it back to his past discipline by Memorial:

> 43. Schedule 'A' attached to the Reasons for decision in Board's file #5962 dated 4 January 2024 was reportedly produced by the Panel members in a cut-and-paste manner. The relevant document was modified and/or altered as a result. The Panel did neither formally acknowledge the manipulations with the record nor alerted of the modifications, although [Memorial] severely disciplined the Applicant in similar circumstances.

(Footnote omitted; Proposed Originating Application, at p. 207)

[57] Another example from the Proposed Originating Application is Mr. Oleynik's unfounded allegation that the LRB panel constituted to review the first DFR complaint did not meet and that "it appears" that the panel chair made the determination on her own, without consulting the other panelists (at p. 207). Mr. Oleynik is again trafficking in conspiracies and asserting unfounded allegations of misconduct.

[58] In short, the material Mr. Oleynik filed before the judge amply supported the judge's finding that the proposed judicial reviews were a continuation of Mr. Oleynik's obsessive and abusive practices that had been considered at length in the *Vexatious Litigant Decision* and that Mr. Oleynik had not established that the Proposed Originating Application was not an abuse of process.

[59] Before this Court, Mr. Oleynik has not shown any legal error or palpable and overriding factual error by the judge. Nor has he shown that the judge failed to exercise his discretion judicially. There is no basis for this Court to interfere with the judge's determination that he was not satisfied that the Proposed Originating Application was not an abuse of process.

Issue 2: Did the Supreme Court err by unreasonably delaying the exercise of its inherent jurisdiction to consider a request for a case management meeting?

[60] The request for case management meeting that Mr. Oleynik is referring to relates to another matter before the Supreme Court, the appeal of which this Court

refused to consolidate with the present appeal (Appeal Book, Tab 6, at p. 33). As such, this issue is irrelevant to the present appeal. It is also another example of Mr. Oleynik attempting to create a web of interrelated proceedings that is confusing and wastes resources.

Issue 3: Did the judge err by showing a closed mind on the arguments advanced and the evidence produced by Mr. Oleynik?

[61] I have already explained that although the reasons given in the Endorsement are brief, they are adequate because they provide a clear indication of the judge's basis for denying leave. The judge was not required to address each argument advanced by Mr. Oleynik or list all ways in which his application was deficient. Again, vexatious litigant orders aim to prevent the wastage of court resources and requiring such a comprehensive analysis for leave decisions would be contrary to that goal.

[62] For reasons I have already indicated, the judge's finding that the proposed judicial reviews were a continuation of Mr. Oleynik's obsessive and abusive practices was amply supported by the material before him. There is nothing before this Court to suggest that the judge had a closed mind or prejudged Mr. Oleynik's application.

[63] This ground of appeal cannot succeed.

Issue 4: Did the judge exceed his jurisdiction by going beyond the restrictions imposed by the vexatious litigant order?

[64] Mr. Oleynik alleges that the fact that his application seeking leave was formally filed with the Supreme Court ten days after he submitted it, and one day before the Endorsement was made, is evidence that his application was pre-screened. He argues that the Supreme Court exceeded its jurisdiction by introducing an additional restriction, pre-screening, that was not contemplated by the vexatious litigant order.

[65] There is no merit to this argument. The formal filing date is not evidence of pre-screening. Moreover, the vexatious litigant order expressly requires court staff to discard any materials from Mr. Oleynik that do not comply with the directions of that order. As such, some pre-screening is anticipated by the order. In any event,

Mr. Oleynik's application was not rejected by the registry. It was filed and reviewed by the judge.

Issue 5: Did the judge err by failing to identify and apply a test for establishing *mala fides* motivation?

[66] Mr. Oleynik further alleges that in making the Endorsement the judge presumed that Mr. Oleynik is motivated by *mala fides*, or bad faith, without having identified or applied the proper legal test for such a finding. Mr. Oleynik also argues that the judge failed to consider that his *Canadian Charter of Rights and Freedoms* rights are engaged in this matter.

[67] The relevant passage of the Endorsement is cited above but repeated here for convenience:

> As stated in paragraph 59 of the [*Vexatious Litigant Decision*], conducting relentless litigation suggest that the originating action is motivated by *mala fides* as against the other party and further at paragraph 79, a consequence of vexatious conduct is to call every action the litigant into question as to its legitimacy of purpose.

[68] In this excerpt, the judge was accurately referencing paragraphs from the *Vexatious Litigant Decision*. Paragraph 79 of that decision succinctly summarizes the judge's point:

> [79] The manner in which this litigation has been conducted now calls into question whether Oleynik *ever* had a legitimate purpose in his initial appeal to this Court. This is a function of vexatious proceedings. Even in situations where there may have been a legitimate dispute, the vexatious litigant, through their behavior, retroactively calls everything into question.

(Emphasis in original.)

[69] I would agree with this statement. In any event, there is no reversible error in the judge's treatment of *mala fides*.

[70] Nor is there any reversible error in his failure to mention Mr. Oleynik's *Charter* rights. Mr. Oleynik's argument is premised in large part on his assertion that he has a constitutional right to a "fair trial" to deal with his grievance. He has a right to a fair procedure, but no right to a full hearing or trial.

DISPOSITION

[71] For the foregoing reasons, I would dismiss the appeal.

[72] I would order that Mr. Oleynik pay costs at Column 3 to MUNFA and Memorial. The LRB did not seek costs, and none are ordered.

____

K.J. O'Brien J.A.

I concur : ________________________________

F.P. O'Brien J.A.

I concur : ________________________________

W.H. Goodridge J.A.