



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

Citation: *Vokey v. Newfoundland
and Labrador*, 2017 NLCA 18

Date: March 6, 2017

Docket: 201601H0006

BETWEEN:

DEREK CONRAD VOKEY

APPELLANT

AND:

GOVERNMENT OF NEWFOUNDLAND
AND LABRADOR

RESPONDENT

Coram: Welsh, White and Harrington JJ.A.

Court Appealed From: Supreme Court of Newfoundland and Labrador
Trial Division (G) 201501G0301

Matter Heard: March 3, 2017

Decision Rendered: March 6, 2017

Reasons for Decision by the Court

Counsel for the Appellant: Self Represented

Counsel for the Respondent: David Rodgers and Jessica Pynn

The Court:

[1] Derek Vokey has filed appeals in this Court arising from (1) his requests for documents pursuant to the *Access to Information and Protection of Privacy Act, 2015*, SNL 2015, c. A-1.2, and the previous legislation, and (2) the decision of an applications judge striking out his statement of claim. He has been greatly dissatisfied with the documentation he has received under the *Act* and has continuously made allegations of fraud, bad faith and criminal conduct against several persons and governmental bodies.

[2] Mr. Vokey has developed the practice over several months of sending almost daily emails to the Court registry in which he repeatedly sets out his allegations. Recently, it was determined that it was necessary to adopt a procedure in this Court that would best assist Mr. Vokey in the pursuit of a practical resolution of his legal issues, consistent with the interests of the administration of justice.

[3] The Court has a responsibility and inherent jurisdiction to provide a process that is appropriate to the particular circumstances brought before it, with consideration being given to a process that is proportionate to the nature of the matter and designed to result in an expeditious and just resolution. To this end, the Court seeks to employ an efficient and orderly process that will facilitate access to justice.

[4] The root of Mr. Vokey's issues is the payment of child support. In 1993, he agreed to pay \$600 monthly for the support of his two children. The agreement was registered with the support enforcement agency. Mr. Vokey contests the assertion that his payments fell into arrears, and if they did, the amount of the arrears. It appears that his passport was suspended for periods of time as a result of non-payment of child support and the arrears. It also appears that any passport suspension has been lifted. Mr. Vokey currently resides in Mexico.

[5] While Mr. Vokey has attempted to deal with his legal problems by obtaining documents under the *Access to Information and Protection of Privacy Act*, he has made no attempt to have the question of child support and the arrears dealt with by way of a variation application in the Supreme Court, Family Division (the "family court").

[6] At the hearing held to determine an appropriate procedure to move Mr. Vokey's matters forward to a practical resolution, because he is self-represented, and based on the allegations and complaints contained in the countless emails he has sent to the Court, the Court explained, among other things, the following:

The family court is the appropriate venue to address Mr. Vokey's current circumstances through consideration of an application for variation of the support order, including consideration of whether the support order is spent, the amount of arrears, and whether any or all of the arrears should be forgiven, or a payment plan put in place.

By making a variation application in family court, Mr. Vokey would be in a position to obtain and present relevant evidence and documentation. A request under the *Access to Information and Protection of Privacy Act* is not the most efficient method of proceeding. The purpose of that *Act* is to provide access to documents held by governmental departments and agencies; it is not meant to address the accuracy or veracity of the documents. By contrast, a judge hearing an application would be able to make any necessary orders for production and to assess challenges to the documents.

Judges in the family court have experience and expertise in dealing with evidence and documents, especially financial information, relevant to support issues. Concerns Mr. Vokey may have with the documents, including those he has obtained under the *Act*, could be addressed as they relate to a variation application.

Judges with potential conflicts would not be involved.

The Court of Appeal could not deal with such a variation application. Nor is its role the assessment of evidence. Rather the role of the Court of Appeal is to assess the decisions of Trial Division judges to determine if there has been error. The assessment is made on the record that was before that judge. The Court of Appeal is not a court of first instance, receiving evidence.

Neither does this Court undertake investigations of a litigant's claims of criminal conduct such as fraud. Where an individual makes such allegations, the proper procedure is to bring the matter to the attention of the police. Simply asserting that certain documents are clearly

fraudulent and expecting this Court to accept that assertion cannot be countenanced. The appropriate procedure must begin with a police investigation where so warranted.

Even if Mr. Vokey is successful in some or all of his issues on appeal relating to the *Access to Information and Protection of Privacy Act*, to obtain a practical resolution of his legal problems, it would still be necessary to deal with the question of child support and arrears in family court. Failure to address that question may have implications for his passport should he return to Canada.

By contrast, dealing with the question of support and arrears in family court may answer all his questions about the documents and render his appeals unnecessary.

Mr. Vokey's current practice of sending often daily emails containing allegations and complaints and attached documents is not an acceptable method of proceeding in this Court.

[7] Mr. Vokey has indicated that he wishes to have his matters dealt with in the courts of Ontario. This Court has no jurisdiction to transfer appeals to another province. To achieve his objective, Mr. Vokey must make an application in the appropriate court in Ontario.

[8] This Court proposed to Mr. Vokey that, before proceeding with the appeals, he should make a variation application in family court to address the child support and arrears issues. By having these questions dealt with in the family court, he would have access to the relevant documentary evidence. To the extent he believes that the documents are in error or that they cannot be relied upon for some other reason, these issues would be dealt with by the judge hearing the evidence. In this way, the concerns Mr. Vokey may have with the documents would be considered in the proper context, that is, as they relate to his core concern, the enforcement of an order for child support, including arrears. Where necessary and to the extent it is deemed appropriate, the court would permit the calling and examining of witnesses.

[9] As part of the proposal, Mr. Vokey's appeals would be adjourned until October 2, 2017, giving him time to pursue a variation of child support and arrears. At that time, or later if necessary, he could advise the Court if he wished to proceed with the appeals. It is to be hoped that decisions

regarding a variation application as to child support and arrears would have been made. This would permit any appeals Mr. Vokey may decide to proceed with to be dealt with at one time. This would serve the interests of both Mr. Vokey and the administration of justice since all the relevant and connected issues would be considered together, avoiding multiple proceedings.

[10] Finally, it is necessary to address the procedural issue of providing documents to the Court. The *Court of Appeal Rules*, NLR 38/16, specify the documents that are to be filed and the manner in which they are to be filed for an appeal. The Court cannot accept multiple submissions and documents that are sent electronically to the registry on the assumption that the Court will process these for a litigant. This is particularly so where the documents are voluminous, repetitive and sent in a constant electronic stream.

[11] At the hearing, Mr. Vokey had the opportunity to comment on the above information and proposal. Ultimately, he agreed to the delay to October 2, 2017. The Court encouraged him to proceed with a variation application to deal with the support and arrears issues as quickly as possible.

[12] Mr. Vokey was also advised that no further electronic messages containing arguments, submissions, allegations, and attached documents will be accepted by this Court. The Court will accept only messages dealing with strictly procedural issues such as the date of a hearing.

[13] Mr. Vokey was also advised that, should he decide to proceed with any appeals, he must comply with the *Court of Appeal Rules* regarding documentation; that is, one factum containing his submissions and legal authorities, and one appeal book containing only the documents that were before the judge appealed from. He will not be permitted to adopt his past practice of sending electronic messages. The *Rules* are intended to facilitate efficiency in the Court and among the parties and, accordingly, compliance is required.

[14] Based on the above and having heard from Mr. Vokey, the Court concludes:

- (1) The appeals Mr. Vokey has filed, numbers 2016 01H0006 and 2017 01H0012, are adjourned according to the following.

(2) Mr. Vokey is strongly encouraged to have the questions of child support and arrears addressed without delay by way of a variation application in the family court.

(3.1) If Mr. Vokey considers on October 2, 2017, or after that date, that the appeals should not be further delayed, he may make an application to the Court for directions as to proceeding with the appeals.

(3.2) This decision does not preclude the Court from directing a further delay after October 2, 2017.

(4.1) If, after October 2, 2017, Mr. Vokey makes an application to proceed with any issues on appeal, he must comply with the *Court of Appeal Rules* regarding the filing of materials.

(4.2) In particular, subject to directions and specific authorization by the Court, for purposes of an appeal, Mr. Vokey is restricted to filing one factum setting out his submissions and legal authorities, and one appeal book containing the record on which the appeals are based.

(5) Until October 2, 2017, unless authorized by the Court, Mr. Vokey shall not send any further documents, submissions or arguments to the Court. If the need arises, he may ask or answer procedural questions only. Documents that do not satisfy this requirement will not be accepted by the registry.

(6) Mr. Vokey's application for government funded counsel to assist with his appeals is adjourned indefinitely to be dealt with, if necessary, when he is in a position to proceed with any issues on appeal.

(7) If, at any time, Mr. Vokey decides that he will not be proceeding with any appeals, he is asked to advise the Court registry.

B. G. Welsh J.A.

C. W. White J.A.

M. F. Harrington J.A.