**CITATION:** Smith v. London Health Sciences Centre et al, 2025 ONSC 4426
**COURT FILE NO.:** CV-24-00003351-0000
**DATE:** 2025/07/30

**SUPERIOR COURT OF JUSTICE - ONTARIO**

**RE:** LARENA SMITH and ISAIAH SMITH, Plaintiffs

**AND:**

LONDON HEALTH SCIENCES CENTER, CATHY VANDERSLUIS and DR SANDRA FISMAN, Defendants

**BEFORE:** Justice I.F. Leach

**COUNSEL:** The plaintiffs self-representing

Andrew McCutcheon and Monica Dos Santos, for the defendants

**HEARD:** In writing, following a case conference



## ENDORSEMENT

[1] The focus of this endorsement is a motion by the defendants herein, initiated pursuant to Rule 2.2 of the *Rules of Civil Procedure*, seeking a vexatious litigant order against the plaintiffs herein pursuant to s.140(1) of the *Courts of Justice Act*, R.S.O. 1990, c.C.43.

[2] By way of further background:

a. On December 18, 2024, the defendants delivered a Form 2.2A Notice of Motion for Vexatious Litigant Order, setting forth the proffered grounds for the motion, including lists of the known ongoing proceedings and concluded proceedings in Ontario courts in relation to which the plaintiffs are or have been parties, and attaching copies of pleadings and endorsements from those proceedings.

b. On January 7, 2025, the aforesaid material filed by the defendants was directed to me as one of numerous "basket" motions and applications; i.e., matters permitted to be heard in writing pursuant to the *Rules of Civil Procedure* or other legislation. As I indicated in a handwritten endorsement released that day, that should not have happened. In particular:

i. The provisions of Rule 2.2 of the *Rules of Civil Procedure*, (which came into force relatively recently, on October 15, 2024, and which therefore were not incorporated into the most recent bound editions of the *Rules of Civil Procedure* for 2025 or otherwise familiar to the court staff), provide a distinct and definite procedure and timetable for the processing and

consideration of such motions. Amongst other things, the provisions of Rule 2.2:

1. require that such a Form 2.2A notice of motion be served on, *inter alios*, any person against whom the vexatious litigant order is sought and all parties to other ongoing proceedings in Ontario to which any person against whom the vexatious litigant order is sought is a party;

2. grant persons against whom such a vexatious litigant order is sought a period of 20 days from receipt of a Form 2.2A notice to serve and file a Form 2.2D response on every notified person;

3. grant parties moving under Rule 2.2 a period of 20 days from receipt of any such Form 2.2D response in which to serve a Form 2.2E reply; and

4. direct via Rule 2.2.06(1) that, after the time for filing any such response and replies has passed, a judge "shall conduct an initial review of the notice and submissions, following which the judge shall make an order in Form 2.2F", with that order either "directing that a hearing of the matter be held under Rule 2.2.07", (with additional orders and directions the judge performing that initial review may consider appropriate), or "dismissing the matter, with reasons".

ii. As noted in my endorsement of January 7, 2025, the defendants' Form 2.2A notice of motion and attachments therefore should not have been sent to me for consideration at that time because doing so was premature; i.e., as the periods for filing of responses and replies had not yet run their course, such that the matter was not ready for presentation to a judge for the "initial review" contemplated by Rule 2.2.06.

iii. In the circumstances, I indicated in my earlier endorsement that the matter accordingly should be held in abeyance until at least January 18, 2025, (if the plaintiffs did not serve and file a response), and until at least 20 days after the service and filing of any response by the plaintiffs, (if any such response was served and filed), and only then placed before a judge; i.e., for the initial review contemplated and indeed mandated by Rule 2.2.06 of the *Rules of Civil Procedure*. I also noted that I was not seized of the matter; not because I had any wish to avoid dealing with the matter if and as necessary, but because I was not seized of the matter and it deserved to be dealt with as soon as possible thereafter without delay associated with having to await the availability of any particular judge.

c. Unfortunately, while the matter was held in abeyance accordingly, (allowing for the service and filing of a Form 2.2D "Response From Potential Subject of

Vexatious Litigant Order" by the plaintiffs on or about December 19, 2024,[1] and passage of the period allowed thereafter for the defendants to serve and file a reply, which they apparently chose not to do), the matter was thereafter not placed before a judge again; i.e., for the "initial review" by a judge mandated by Rule 2.2.06. It was instead allowed to languish for many months thereafter, without the matter being placed before a judge to carry out that mandated initial review. That too should not have happened.

d. On January 31, 2025, this proceeding apparently was before Madam Justice Leitch in regular motions court, for the purpose of addressing a motion apparently brought by the plaintiffs. The endorsement made by Madam Justice Leitch that day indicated that the relief being sought by the plaintiffs was unclear, but that the plaintiffs' motion was being adjourned *sine die* in any event "pending the court's decision on the defendants' outstanding motion", initiated by the defendants' delivery of a Form 2.2A notice, requesting an order pursuant to section 140 of the *Courts of Justice Act, supra*. However, it seems no further steps were taken at the time or for many months thereafter to raise, with Madam Justice Leitch or the court office, the need for presentation of the delivered Rule 2.2 materials to a judge for the "initial review" mandated by Rule 2.2.06 of the *Rules of Civil Procedure*.

e. When the defendants thereafter continued to receive no order made pursuant to Rule 2.2.06(1), one way or the other, steps apparently then were taken to schedule a case conference before me this morning, (to be held by teleconference), in respect of which counsel for the defendants filed a "Case Conference Agenda" indicating that the defendants were "requesting directions from the court as to whether the motion may now be placed before a judge for initial review". In that regard:

    i. It is not clear how that case conference came to be scheduled, (i.e., whether it was requested by a party or independently scheduled by the court), but that too should not have happened.

[1] In addition to the initial Response served and filed by the plaintiffs, a further document apparently was filed by the plaintiffs on or about June 9, 2025, entitled "Response to Request for CASE CONFERENCE", (no doubt in response to the "CASE CONFERENCE AGENDA" document apparently filed by the defendants that same day. It seems the plaintiffs also served and filed a further Form 2.2D "RESPONSE FROM POTENTIAL SUBJECT OF VEXATIOUS PROCEEDINGS ORDER" on or about July 29, 2025, amended so as to add, to that form heading, the words "STAY OF PROCEEDINGS – AGAINST DEFENDANTS FOR DISMISSAL – REVISED". In that regard, I will note that the Rule 2.2. procedure does not contemplate or permit the filing of any supplementary responses to a Form 2.2A Notice of Motion for Vexatious Litigant Order other than the initial response contemplated and permitted by Rule 2.2.05(1) of the *Rules of Civil Procedure*. The plaintiffs apparently filed that further document in support of a desired request to have the defendants' Form 2.2A notice of motion and corresponding request pursuant to Rule 2.2 summarily dismissed. In my view, however, such an additional step is neither contemplated nor permitted under the Rule 2.2 procedure. Again, that procedure instead requires the matter to be placed before a judge for initial review after the time for any responses and replies following delivery of an initial Form 2.2A Notice of Motion for Vexatious Litigant Order.

ii. In particular, the Rule 2.2 procedure does not contemplate or permit, prior to the "initial review" mandated by Rule 2.2.06, any hearing or input of the parties beyond service and filing of the Form 2.2A notice, Form 2.2D responses (if any) and Form 2.2E replies (if any) noted above. Nor does it contemplate or permit any further steps, after delivery of such material or the passage of time allowed for the delivery of such material, before the mandated "initial review" takes place.

iii. Once the court's attention had been drawn to the fact that the matter had not yet been placed before a judge for the "initial review" mandated by Rule 2.2.06 after the time for the service and filing of responses and replies had passed, (as directed by my earlier endorsement), the matter simply should have been directed immediately to any judge of the court to conduct that mandatory initial review.

iv. Moreover, even if it somehow was thought such a case conference providing further input from the parties and/or directions from the court was appropriate or necessary, the scheduling of such a conference should not have been delayed for almost two months until such a case conference could be added to my docket. Once again, I was and am not seized of the matter, and waiting until the matter could be placed before me unnecessarily delayed progress of the Rule 2.2 process for almost two additional months.

f. When the scheduled case conference proceeded before me this morning, (with defence counsel and Ms Smith appearing to speak to the matter by teleconference, and with Ms Smith speaking for both plaintiffs), I reviewed the above developments, and explained why I felt that the matter simply should have been directed to a judge for the required Rule 2.2.06 initial review rather than a case conference. I also explained that, in the circumstances, I had conducted that "initial review" once the failure to have that occur before now had been brought to my attention. I also indicated and explained:

i. that I would be making an order pursuant to Rule 2.2.06(1)(a) directing that a hearing of the matter be held under Rule 2.2.07;

ii. that I would be ordering that the directed Rule 2.2.07 hearing be heard in writing;

iii. that I would be making further indicated ancillary orders and directions, pursuant to Rules 2.2.06(2) and 1.05, including provisions directing the delivery of further materials in accordance with a timetable peremptory on all parties, and ordering a stay of the current proceeding and the bringing or hearing of any other motions herein until the defendants' Rule 2.2. motion had been decided; and

iv. that the parties would be receiving a written copy of my order and a corresponding endorsement later in the day if possible, or the following day.

g. Although it was not required, I took the parties verbally through the provisions of the contemplated Order they would be receiving, explaining in particular, to the self-representing plaintiff Ms Smith, the meaning of terms used therein and their significance, as noted and discussed in further detail below.

[3] In contrast to the provisions of Rule 2.2.06(1)(b) applicable to orders dismissing a Rule 2.2 motion following the mandated "initial review" by a judge, which require a judge making such a dismissal order to provide reasons in that regard, the provisions of Rule 2.2.06(1)(a) do not require the delivery of reasons if the judge conducting the initial review determines that a Rule 2.2.07 hearing should be directed.

[4] For clarity, I nevertheless will indicate the following:

a. In my view, the material served and filed by the parties to date, pursuant to the Rule 2.2 procedure, raised sufficient indications of potential vexatious litigation to warrant a hearing pursuant to Rule 2.2.07; i.e., to determine whether the requested Vexatious Litigant Order might be appropriate . Without any ruling on the ultimate merits of the defendants' request and whether the requested Vexatious Litigant Order should be granted:

i. The documentation provided by the defendants provides confirmation that the plaintiffs have commenced repeated proceedings in the courts of Ontario, (as well as complaint proceedings before the province's College of Physicians and Surgeons and Human Rights Tribunal), against the same defendants, with indications that the said proceedings were duplicative ones addressing the same underlying allegations and complaints; i.e., indications raising concerns about possible re-litigation of matters that were *res judicata* or governed by considerations of issue estoppel.

ii. Such proceedings also date back to at least 2014, (in relation to matters that were said to have occurred before then), raising concerns about litigation of matters barred by the passage of applicable limitation periods, especially having regard to indications, (via earlier proceedings), that the plaintiffs may very well have had knowledge of the facts underlying their allegations and complaints, and a belief that those facts warranted the bringing of formal claims in that regard.

iii. In the most recent concluded proceeding, (i.e., *Barry v. Fisman and the London Health Sciences Center*, London court file no. 476/21), Justice Grace made express and reasoned findings that the plaintiffs' pleading in

that matter was duplicative of prior proceedings and, on its face, frivolous and an abuse of process.

b. In my view, it was appropriate to order that the directed Rule 2.2.07 hearing be heard in writing, (one of the possibilities contemplated by the Form 2.2F draft order template), instead of a *viva voce* hearing conducted in person, by video or by teleconference, for the following reasons:

    i. In my view, the matter was not amenable to a hearing on one of London's now extremely busy regular motion court dates. A judge presiding over such a court inevitably would be hard pressed to review and digest details of the extended litigation history already presented in the material filed to date, let alone the additional material, arguments and authorities which the parties will be filing. Nor would the maximum 60 minutes allowed for the hearing of matters in regular motions court likely suffice to address the matter, particularly having regard to the participation of self-representing litigants.

    ii. Recent experience in motions court in relation to the scheduling of special appointment hearings, (i.e., hearings providing more than 60 minutes for argument), and the general lack of special appointment hearing time in the reasonably near future, suggests that adjournment of the defendant's Rule 2.2 motion to such a special appointment hearing probably would delay progress of the defendants' Rule 2.2 motion for at least several more months, if not longer. That would add to the more than six months of delay already experienced in relation to the defendants' Rule 2.2 motion.

    iii. In my view, written submissions would promote a greater focus, (from the plaintiffs in particular), on the precise issues raised by defendants in this Rule 2.2 process, which are likely to be clarified and confirmed further in the additional material the defendants have been directed to file and to which the plaintiffs will be required to respond.

c. As for the additional orders/directions I have made:

    i. I thought it appropriate, (particularly given the plaintiffs' apparent attempt to bring at least one motion while the defendants' Rule 2.2 request for a vexatious litigant order was still outstanding), to make an order staying this proceeding and preventing the bringing or hearing of additional motions therein until the defendants' motion had been heard and determined; i.e., an order as contemplated by Rule 2.2.06(2)(f) of the *Rules of Civil Procedure*.

    ii. As contemplated by Rules 2.2.06(2)(a), (b), (e) and (f) of the *Rules of Civil Procedure*, I thought it appropriate to direct the filing of a formal motion record by the defendants, as well as other indicated supplementary

material to be delivered by the parties, pursuant to a definite timetable, before the directed Rule 2.2.07 hearing. In my view, that was particularly advisable in this case; e.g., to ensure a thorough and ordered presentation of evidence and argument, insofar as the hearing would take place in writing, and therefore without interactive dialogue between the parties and the presiding judge.

iii. In that regard, I also thought it appropriate to order, as a threshold step in the directed timetable to ready this matter for the directed Rule 2.2.07 hearing in writing, that the plaintiffs serve and file written confirmation of every ongoing proceeding to which the plaintiffs or either of them are a party, and the name and address for service of every other party to any such proceeding; a possibility contemplated by Rule 2.2.06(2)(c) of the *Rules of Civil Procedure*. While the defendants have made efforts to identify and note all such proceedings, their list in that regard may or may not be complete, and the existence of other such proceedings might have relevance to the issues to be decided on the directed Rule 2.2.07 hearing. In my view, the defendants accordingly should be provided with that information before having to finalize and deliver their directed formal motion record.

iv. While I had arrived at a contemplated timetable setting specific dates for the delivery of further material peremptory on all parties without their input, I will note that I then went over those specific contemplated dates with the parties during the case conference this morning, (i.e., before my order was finalized), and there were no objections or concerns raised on behalf of the plaintiffs or defendants in that regard; i.e., in terms of any party's ability to comply with that contemplated timetable.

v. During this morning's case conference, I also explained, as noted above, for the benefit of the lay plaintiffs in particular, the nature of certain potentially/probably unfamiliar terms to be used in the contemplated order; e.g., my intended references to the filing of a "factum", the inclusion and use of "hyperlinks" therein, and what was to be included in the "compendium" I was requiring the defendants and the plaintiffs to file in relation to any cases upon which they would be relying.

vi. Finally, during this morning's case conference, I also went over the additional provisions of my order which would permit the defendants to make a written request for granting of the requested order if the plaintiffs failed to comply with the provisions of my order, (including compliance with the timetable peremptory on all parties), and which would permit the plaintiffs to make a written request for dismissal of the motion initiated by the defendants pursuant to Rule 2.2, and a lifting of the stay and temporary prohibition of further motions I have ordered in relation to this

proceeding, if the defendants failed to comply with the provisions of the order.

d. I will repeat again, for clarity, that I am *not* seized of this matter. When the ordered timetable has been completed, the matter can and should be placed before any available judge as soon as possible, with a view to having the Rule 2.2.07 hearing in writing completed and a determination in that regard made without further delay.

[5] In my view, the orders and directions I have made should suffice to have this Rule 2.2 process now move forward again to a conclusion one way or the other in an orderly and expeditious way, hopefully before the end of this coming September.

Justice I.F. Leach

**Date:** July 30, 2025