

**SUPERIOR COURT OF JUSTICE – ONTARIO**

**IN THE MATTER OF THE ESTATE OF JEFFREY KERZNER, deceased**

**RE:** Branislava Stajduhar, Applicant (Responding Party)

**AND:**

Arlene Wolfe, Respondent (Moving Party)

**BEFORE:** C. Gilmore, J.

**COUNSEL:** The Applicant appeared on her own behalf

Shaheynoor Talukder, counsel for the Respondent

**HEARD:** January 5, 2026

**ENDORSEMENT ON MOTION**

**Introduction**

- [1] The Respondent and Moving Party, Arlene Wolfe (“Ms. Wolfe”), is the Estate Trustee of the Estate of the late Jeffrey Kerzner (“the deceased” or “Jeffrey” or “the Estate” or “the Jeffrey Estate”). The deceased died in 2016. In his 2012 Will, he left his estate to his two children, Sarah and Jacob Kerzner.
- [2] Ms. Wolfe is a retired lawyer and was a friend of the deceased. She is not a beneficiary of the Estate. Ms. Wolfe advises that the administration of the Jeffrey Estate is close to, but not entirely, completed. Jeffrey’s father, Joseph Kerzner, died in 2015 (“the Joseph Estate”). Jeffrey inherited some funds from his father’s Estate, but he died before he received all of his entitlements. Those entitlements passed to Jeffrey’s children.
- [3] The Applicant, Branislava Stajduhar (“Ms. Stajduhar”), was a casual girlfriend of the deceased. She represented herself at this motion. She is not a beneficiary of the Jeffrey Estate or the Joseph Estate.
- [4] Ms. Stajduhar requested the presence of a Serbian interpreter at the motion. Ms. Stajduhar has appeared before me on prior occasions and is able to make herself understood in English without difficulty. At no time during the motion did Ms. Stajduhar request the assistance of the interpreter.

- [5] Ms. Stajduhar has commenced an Application in which she seeks dependent's relief from the Estate. Her other claims are somewhat unclear but relate to allegations that the proper amount of Estate Administration Tax were not paid to the Ministry of Finance, that lawyers acting for the Estate and judges hearing prior matters related to the Estate were subject to a conflict of interest, that the Estate Trustees of the Jeffrey and the Joseph Estate have committed fraud, that both the Jeffrey and the Joseph Estate must provide an accounting and statement of assets, and that the Estate has not paid taxes owing to the Canada Revenue Agency ("CRA").
- [6] Ms. Wolfe seeks a dismissal of the Application on the following grounds:
- a. The dependent's relief claim of the Applicant was previously litigated. It was dismissed by this Court, the Ontario Court of Appeal and leave to appeal to the Supreme Court of Canada was denied. The claims are therefore *res judicata*.
  - b. The Applicant lacks standing. Her claims for dependent's relief were dismissed and she is not a beneficiary of the Estate.
  - c. The Applicant was required to pay costs in relation to the prior dependent's relief application, the appeal and the leave application. Those costs total more than \$40,000 and have not been paid.
  - d. The Application is not properly constituted, and the claims have no legal basis or are claims over which this Court has no jurisdiction.
  - e. The claims are statute barred.
  - f. The claims are frivolous, vexatious and an abuse of process.
- [7] Ms. Wolfe also seeks an order declaring the Applicant a vexatious litigant and prohibiting her from commencing any further claims against Ms. Wolfe or the Estate without leave and without payment of all costs owed, including any costs awarded for this motion.
- [8] The Applicant requests that the motion be dismissed. She insists that the motion is premature, procedurally defective and legally untenable and that the relief in her Application ought to be considered before taking such a drastic step as a dismissal.
- [9] For the reasons set out below, the relief sought in the motion is allowed and the Application is dismissed. The Applicant's conduct towards opposing counsel has been abhorrent. While her overall conduct does not rise to the level required to have her declared a vexatious litigant, the court will impose terms on any future proceedings commenced by the Applicant including a requirement that she must seek leave and pay all outstanding costs (including the costs of this motion) before commencing any further claims in the Superior Court of Justice of Ontario.
- [10] As well, Ms. Wolfe has been put through enough and should have her full indemnity costs of the motion.

## Background

- [11] Jeffrey Kerzner died on December 31, 2016, and left a Will dated May 9, 2012. He appointed Ms. Wolfe as his Estate Trustee. Jeffrey's father, Joseph Kerzner, died on January 28, 2015. Jeffrey was a beneficiary of his father's Estate. Jeffrey's children, Sarah and Jacob Kerzner, are the beneficiaries of Jeffrey's Estate.
- [12] The Applicant and her daughter, Andreja Stajduhar, filed an objection to Ms. Wolfe's appointment as Estate Trustee for the Estate. The objection was dismissed with costs of \$2,500 awarded against Ms. Stajduhar in 2017. A Certificate of Appointment of Estate Trustee with a Will was issued to Ms. Wolfe on June 6, 2017.
- [13] On May 23, 2017, Ms. Stajduhar and her daughter filed an application for dependent's relief against the Estate. They claimed that Ms. Stajduhar was a dependent spouse and her daughter was a dependent child of the Estate. All claims were dismissed by Dunphy J. in August 2017 by way of a lengthy and comprehensive written decision. That decision included a finding that Ms. Stajduhar was not Jeffrey Kerzner's common law spouse and they never cohabited. Justice Dunphy also found that Ms. Stajduhar's claims with respect to the value of Jeffrey Kerzner's estate were "hugely exaggerated" and "quite starkly contradicted by the evidence." Costs of \$25,000 were awarded against Ms. Stajduhar and her daughter. Those costs remain unpaid.
- [14] The Applicant and her daughter appealed Dunphy J.'s decision to the Ontario Court of Appeal. The Court of Appeal dismissed the appeal and awarded costs against the Applicant and her daughter in the amount of \$12,500 in March 2018. Those costs remain unpaid.
- [15] The Applicant and her daughter filed a motion to extend the time to serve and file an application for leave to appeal at the Supreme Court of Canada. The motion was dismissed by the Supreme Court of Canada with costs awarded against the Applicant and her daughter on February 7, 2019, in the amount of \$1,566.78. Those costs remain unpaid. In its endorsement, the Supreme Court noted that even if the motion had been granted, leave to appeal would have been denied.
- [16] In April 2019, the Applicant swore private informations against Ms. Wolfe and Sarah Kerzner alleging theft, criminal mischief and obstruction of justice. On April 24, 2019, the presiding Justice of the Peace declined to issue the informations on the grounds that there was insufficient evidence to charge Ms. Wolfe and Ms. Kerzner.
- [17] Ms. Wolfe, on behalf of the Estate, made multiple attempts to examine the Applicant in aid of execution in order to enforce the costs awards. The Applicant avoided service of Notices of Examination five times in 2018. Finally, Ms. Wolfe had to incur the cost of bringing a motion for substituted service of the Notice of Examination. An order for substituted service was made on November 2, 2018. On that same day, the Applicant was served with

a Notice of Examination for November 9, 2018. The Applicant failed to attend, taking the position that the Estate should pay all of the costs. Ms. Wolfe could not justify spending more legal fees to enforce the costs and has simply continued to renew writs of execution filed against the Applicant and her daughter. The outstanding costs owed by the Applicant as awarded between June 2017 and July 2019 are \$41,566.78 plus interest.

[18] When Ms. Wolfe's counsel at that time attempted to communicate with the Applicant about the payment of costs in March 2018, the Applicant responded as follows by email:

I will not be able to pay any amount. You are aware of this. And you know that you are involved in criminal activities with Judges.

[19] Ms. Wolfe's counsel did not receive notice of the within Application until May 7, 2025, when she received an email from Hull & Hull LLP who had acted for the Joseph Estate. An endorsement from May 1, 2025 required that the Notice of Application be amended and that personal service be effected on Ms. Wolfe.

[20] Given that the main claim in the Application related to dependent's relief was previously denied by this court and dismissed on appeal, Ms. Wolfe's counsel filed a Request for Stay or Dismissal on May 16, 2025. The court office did not take steps with respect to the request, and it was not brought to my attention.

[21] In the interim, Ms. Wolfe's counsel discovered that a hearing date for the Application had been set for September 18, 2025, without any consultation with her. The court had noted that Ms. Wolfe had been personally served but it was later discovered that the affidavit of service contained questionable information and Ms. Wolfe alleged that a default hearing date had been set without her having been personally served with the Application.

[22] Finally, the matter came before me on August 22, 2025. I vacated the September 18, 2025 date and set out a litigation timetable that was agreed to by both parties, including the date for the hearing of the within motion.

[23] The Applicant's Application requests the following relief:

- I. The Applicant respectfully requests guidance on the following matters regarding the valuation of the Joseph Kerzner Estate and Jeffrey Kerzner, deceased:
- II. To issue a directive or order as to why the Estate Administrative Tax has not been paid and why there is no Estate Return as it should.
- III. To give a directive or order and an explanation if it is sufficient to say in court that "I am a lawyer, you have to accept everything I say and what I submit to you as records".

- IV. It would be greatly appreciated if you could provide direction on, advice, or an order for the issuance of the Estate Certificate without an Application or not following the rules.
- V. Applicant respectfully request guidance and concrete explanation on the following matter regarding the conflict of interest from the lawyers involved in this case and previous Judges.

- [24] In her factum, the Applicant appears to add new claims that are not addressed in her Application, including a request for equitable accounting and tracing; allegations of fraudulent concealment and fraudulent misrepresentation that the Will of Jeffrey Kerzner was executed under duress and without capacity; request for a forensic audit; removal of Ms. Wolfe as Estate Trustee and appointment of an independent administrator in her place; an order to freeze and preserve assets of the Jeffrey Estate; a claim for constructive trust based on contributions made to the deceased's household and business ventures by the Applicant; and disclosure of all testamentary instruments, tax filings, property conveyances, insurance policies, settlement agreements and all foreign assets.
- [25] The Respondent submits that the Application is not properly constituted and that the claims for relief are unintelligible or that this court does not have authority to grant them. As for the further relief sought by way of the Applicant's factum, it is improperly raised for the first time and should not be considered by this court.

### **The Motion to Strike or Adjourn**

- [26] The Applicant has filed a motion to strike the Respondent's Supplementary Motion Records, Supplementary Factum and Supplementary Book of Authorities, filed on December 18, 2025. She submits that those materials were filed without leave of the court and in contravention of filing deadlines established by the *Rules* and this court on August 22, 2025. In the alternative, she seeks an adjournment in order to respond to the additional material.
- [27] The Applicant argues that in accordance with the court's jurisdiction to control its own process, it should strike the supplementary material to ensure finality, predictability and the necessary procedural discipline for parties engaged in motion proceedings. Allowing such material is unfair, oppressive and an abuse of the court's process. The materials filed are not simply minor clarifications, corrective, responsive or merely procedural matters; they expand and reinforce the Respondent's legal position.
- [28] The Applicant submits that there are no exceptional or intervening circumstances which would permit the filing of such additional material. Allowing the court to consider the supplementary material would be prejudicial to the Applicant, especially as she is self-represented. Such prejudice cannot be cured by an adjournment or costs. Further, allowing such further materials contemplates an unrestrictive filing process in motion proceedings which is not the intention of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194 (the

“Rules”). In the alternative, the Applicant seeks leave to file a limited responding affidavit and concise written submissions.

- [29] The Respondent has filed two supplementary motion records. The first dated December 12, 2024, is an affidavit of service of the Supplementary Affidavit and Motion Record of Arlene Wolfe, dated November 10, 2025, with an exhibit which includes the Applicant’s November 12, 2025 email responses set out below. The second Supplementary Motion Record is an affidavit of service of the Motion Confirmation on December 19, 2025, and service of the Bill of Costs and Draft Order on December 29, 2025. Exhibits to that affidavit are the email responses sent by the Applicant as set out below.
- [30] As for the Supplementary Factum and Supplementary Book of Authorities, those documents simply do not exist as confirmed by the Respondent’s counsel. The Respondent’s counsel served one factum and one Book of Authorities. There were no supplementary materials.
- [31] The Supplementary affidavits do not contain substantive or new information. They are simply affidavits of the Respondent’s counsel’s law clerk containing emails from the Applicant to the Respondent’s counsel. The Applicant does not deny sending the emails. I find they are relevant to the issues of abuse of process, and the allegation that the Application is a vexatious litigant as raised by the Respondent.
- [32] The provision of reply motion material is not specifically provided for in r. 37 of the *Rules*. However, it is an accepted practice in this court to permit the moving party to respond to new issues raised by the responding party. In *Aware Ads Inc. v. Walker et al*, 2021 ONSC 7452, the responding party objected to the service of reply material on the grounds that it was not set out in the court ordered timetable. Similarly, in this case, I ordered a specific timetable. The date by which reply materials were to be served was November 17, 2025. However, Ms. Talukder, counsel to the Respondent, did not receive the subject emails until well after that date.
- [33] The court is entitled to have the benefit of a complete record before it in order to properly determine the issues on their merits: *Aware Ads*, at paras. 14-19. As for the timing of the additional materials, they were served on December 18, 2025, more than two weeks before the hearing of the motion. As no request to cross-examine was made, I allow all the supplementary materials to be admitted.
- [34] The Applicant’s request to strike the supplementary material is denied. Her request for an adjournment is also denied. It is unclear how an adjournment could assist, given that the Applicant does not deny sending the emails.

### **The Position of the Respondent on the Motion**

- [35] The Respondent’s position is clear. The Applicant has no standing as she is not a beneficiary of the Estate and her claim for dependent’s relief was dismissed by Superior Court and at every appeal court. The Applicant is statute barred from initiating a claim for

dependent's relief pursuant to Part V of the *Succession Law Reform Act*, R.S.O. 1990, c. S.26 (the "SLRA").

- [36] The Applicant has refused to pay any outstanding costs orders, evaded service of a Notice of Examination in Aid of Execution and failed to attend a scheduled examination, notice of which was properly served in accordance with an order for Substituted Service.
- [37] The Application is not properly constituted and has no merit. Additional and new issues raised in the Applicant's factum are not properly before the court and cannot be considered on this motion.
- [38] As set out in the examples below, the Applicant has been abusive and unrelenting. Her racist comments to Ms. Wolfe's counsel, Ms. Talukder, are shocking:

- a. On May 16, 2025, after receiving the Request for Stay or Dismissal, the Applicant sent the following email to counsel for Ms. Wolfe:

Are you going to answer the Application that has been served and not use any more your Indian connection at the court?

- b. On July 16, 2025, Ms. Wolfe's counsel emailed the court and queried how a hearing date could be set when her client was not personally served with the Application. The Applicant sent the following email [sp]:

I ask you Ms Taluker not to commit fraudulent informations as you used.

You are not in the position to lie and steal the money from anyone anymore including Court that you committed fraudulent statement together wot hall your friends. Shame on you! You will return the money to me and the Court period!

- c. On August 21, 2025, the Applicant sent the following email to the court office [sp]:

Just a friendly remainder that Canadians Judge at the International Criminal Court got sanctions as reminder that nobody is beyond the Law.

Canadian Justice suspended at the International Criminal court is heavily involved in fraud. Good to know.! "Nobody is beyond the Law."

Any date previously confirmed, cannot be adjured / considered without legal justification personal decisions will not be tolerated or base on fraud committed by Respondent and Talukder.

- d. On November 12, 2025, Ms. Talukder served a supplementary motion record on the Applicant and copied her law clerk. The Applicant replied by email as follows:

Both of you can wipe your stinky butt and fuck yourself.

- e. On December 19, 2025, Ms. Talukder requested that the Applicant sign the required court confirmation for the motion by December 22, 2025. The Applicant responded by email as follows [sp]:

You can wilpe your Indian butt with those documents also ask lan Pouka when he fuck you to fuvk yiu im tiur mouth

Sent from my iphone

- [39] At 10:01 a.m. on December 19, 2025, the Applicant sent the following email to Ms. Talukder:

Fuxk your self stinky cow  
Sent from my iphone

- [40] After serving the Applicant with her draft order and Bill of Costs, the Applicant responded by email as follows:

You can wipe your stinky pussy and Indian butt

Sent from my iphone

- [41] The Respondent seeks to have the Applicant declared a vexatious litigant as she does not follow court orders, abuses the court process and is insulting to the Applicant and her counsel. The Respondent has had to expend Estate funds for court processes which have no legal foundation, this being the second round of such litigation.

### **The Position of the Applicant**

- [42] The Applicant defends the motion on the grounds that her Application is properly constituted and “*bona fide*”. She submits that the motion is premature, procedurally defective and legally untenable. A dismissal of her Application at this stage would result in a denial of natural justice and procedural fairness.
- [43] The Applicant submits that no Certificate of Estate Trustee was issued for the Jeffrey Estate and as such, the Respondent has acted without authority. The Respondent has failed to disclose the true value of the Estate which exceeds \$40M and not the reported \$1.5M. Given this fraudulent concealment, the normal limitation periods cease to run. Given her concealment of the true value of the Jeffrey Estate, Ms. Wolfe did not submit the proper amount of Estate Administration Tax to the Ontario Ministry of Finance. The Applicant demands an investigation into this issue.
- [44] The Applicant submits that she has new evidence of underreported assets, irregular accounting practices and conflict as well as evidence that the subject Will was executed under duress, without capacity and that the testator was subject to undue influence.

- [45] The Applicant describes herself as the long-term common-law partner of the deceased, upon whom she was financially dependent. She submits she contributed more than \$160,000 from her personal savings to the relationship. She is entitled to retroactive dependent's support from December 31, 2016, and to any further adjustments which may be supported by the additional disclosure sought.
- [46] The Applicant submits she has suffered serious financial deprivation and psychological hardship despite her clear statutory entitlement to dependent's support. She is entitled to damages in relation to her claim for a constructive trust interest in the Jeffrey Estate based on her contributions to Jeffrey's household and business interests.
- [47] The Applicant takes the position that Ms. Wolfe has failed to pass her accounts and therefore breached her fiduciary duties as Estate Trustee. Further, the passing of accounts in the Joseph Estate is deficient. As such, a forensic tracing of all assets in both Estates should take place.
- [48] The Applicant submits that in order to properly investigate the fraudulent concealment, misappropriation and conflict of interest issues, both the Jeffrey and the Joseph Estates must provide detailed disclosure of all of their assets worldwide and any distributions of those assets. Pending such disclosure the assets of both Estates must be preserved and frozen.
- [49] Finally, the Applicant requests that Ms. Wolfe be removed as Estate Trustee on the grounds of a breach of fiduciary duty and conflict of interest and that she be replaced by an independent administrator. She seeks dependent's support for her and her daughter retroactive to December 31, 2016.

## **Analysis and Ruling**

### ***Issue #1 – Standing and Dependent's Relief Claim***

- [50] The Applicant does not have standing in this proceeding. Her dependent's relief claims (and those of her daughter) were dismissed over eight years ago with specific findings by Dunphy J. that the Applicant was not a dependent spouse, and her daughter was not a dependent child.
- [51] The principle of *res judicata* applies in this case. The issue of dependent's support was raised and decided in 2017, the prior judicial decision was final as no avenue of appeal was successful, and the parties are the same: *Danyluk v. Ainsworth Technologies Inc.*, 2001 SCC 44, [2001] 2 S.C.R. 460, at para. 25.
- [52] Not only did Dunphy J. determine that the Applicant and Jeffrey Kerzner were not common law spouses, he found that they never lived together and that their relationship was interrupted on at least two occasions in the three years prior to the deceased's death. None of these factual findings have been overturned.

[53] While the issue of constructive trust was not actually raised in the Application (it was only in her factum), the Applicant lacks standing to bring such a claim. Pursuant to s. 38(3) of the *Trustee Act*, R.S.O. 1990, c. T.23, constructive or resulting trust claims must be made within two years of the date of death. The claim has therefore been statute barred for more than seven years.

### **The Limitations Issue and Other Issues Raised in the Application**

[54] The Respondent submits, and I agree, that in addition to the Applicant lacking standing to bring her Application, the Application is statute barred. Pursuant to s. 61 of the *SLRA*, a claim for dependent's support may not be brought more than six months after the grant of probate. The Certificate of Appointment of Estate Trustee was issued in June 2017. While the court has jurisdiction to waive this time limit, the Applicant has never brought an Application to extend the time limit set out in the statute.

[55] The Applicant appears to argue that no Certificate of Appointment was ever issued and therefore the time limit under s. 61 never began to run. However, the Respondent was appointed as Estate Trustee on June 6, 2017, after the Applicant's Notice of Objection was dismissed. No appeal was taken from that dismissal order.

[56] The Applicant alleges that the value of the Jeffrey Kerzner Estate has been seriously underreported and as such, the amount of Estate Administration Tax paid was incorrect. She further argues that as a result of this underreporting, the considerations of the court with respect to the Applicant's claims for dependent's support in 2017 did not take into account the full value of the Estate.

[57] In her materials, the Applicant appears to comingle the value of the Jeffrey Kerzner Estate with the value of his father, Joseph Kerzner's estate. This is neither reasonable nor appropriate. Jeffrey was left certain amounts in his father's will but died before he received all of his entitlements, which then passed to his children.

[58] I rely on the findings of Dunphy J. in his 2017 decision in which he determined that Jeffrey received an income from his father of about \$126,000 per year and that upon his father's death, he received approximately \$2M. Jeffrey was to have received further money from his father's estate which would have vested after January 28, 2017, but Jeffrey did not live that long. Therefore, Dunphy J.'s finding that the value of Jeffrey's estate was in the range of \$1.5M appears reasonable and I note that this finding has never been overturned.

[59] Two issues arise from the Applicant's submissions on this point. First, the Estate Administration Tax that was paid aligns with Dunphy J.'s finding that Jeffrey's estate was valued at approximately \$1.5M. Second, even if there was a discrepancy in reporting for Estate Administration Tax purposes, this matter would be pursued by the Ontario Ministry of Finance. It is not a matter in which this court can interfere or assert jurisdiction.

- [60] The Applicant also alleges fraud with respect to the failure to file proper tax returns for the Estate and pay the required tax; that Ms. Wolfe acted without authority as she was never appointed as Estate Trustee; and that Ms. Wolfe was subject to a conflict of interest and failed to provide a proper accounting.
- [61] While fraud allegations could, in other circumstances, require a reconsideration of limitations issues, the Applicant has no standing to litigate any of these issues. As already set out above, the Applicant is neither a dependent nor a beneficiary of Jeffrey's Estate or that of his father. She has no financial interest in the Estate.
- [62] The Applicant submits that because she received a CPP survivor benefit in relation to the Jeffrey Estate, this should cement her dependent's relief claim. Similar to the Court of Appeal, I find that this issue is immaterial to the issues at hand. The Court of Appeal refused to accept the CPP information as fresh evidence and found it to be irrelevant to the legal principles applied by Dunphy J. in his decision at first instance: *Kerzner Estate*, 2018 ONCA 258, at para. 4.
- [63] The Applicant also alleges that Ms. Wolfe has not passed her accounts and was in a conflict of interest. It is not known whether Ms. Wolfe passed her accounts. Even if she had, the Applicant does not have a "contingent or vested" interest in the Estate pursuant to r. 74.18(3), and as such, she is not entitled to receive or object to those accounts. As for the conflict, I fail to see any grounds for this allegation. Ms. Wolfe was not a beneficiary of the Estate. The sole beneficiaries of the Estate were Jeffrey's children. There is no evidence that they contested her appointment or her administration of the Estate. The allegation of conflict of interest is a baseless one.
- [64] Finally, the Applicant submits that Ms. Wolfe failed to submit proper tax returns on behalf of Jeffrey's Estate. Again, this is an issue in which the Applicant, as an individual without standing in this litigation, cannot raise as she is not a beneficiary, nor does she have a financial interest in the Estate.
- [65] If Ms. Wolfe failed to properly administer the Estate which resulted in the Estate attracting penalties and/or interest for the late filing or lack of filing of proper tax returns, this would be an issue for the beneficiaries to raise. There is no evidence that the beneficiaries of Jeffrey's Estate made any attempt to remove Ms. Wolfe as Estate Trustee or were critical of her administration of their father's Estate in any way.

### **The Refusal to Pay Costs**

- [66] As set out above, the Applicant has steadfastly refused to pay any costs or be examined in relation to those costs. The Applicant has failed to comply with previous court orders in a glib manner, abusing the court process. The Applicant requests relief from this court while maintaining the persistent yet untenable position that the Estate should pay any costs incurred by her misguided litigation.

- [67] When asked by the court to comment on the costs sought by the Respondent for this motion, the Applicant made it clear that she has no intention of paying any of the costs associated with this motion.
- [68] Access to the court system comes with responsibility and risk. It is the responsibility of every litigant to abide by the *Rules of Civil Procedure*. Allowing parties to simply claim they cannot afford to pay costs awarded against them would result in a chaotic system that would allow impecunious litigants to litigate at will without consequence.
- [69] In *Baradaran v. Tarion Corp.*, 2015 ONSC 7892, Myers, J. stayed the proceeding to allow the plaintiff to pay outstanding costs awards. If he failed to pay the awards, the defendants were permitted to move to dismiss without notice. In allowing the dismissal, Myers J. made the following comments at para. 16:
- Treating all litigants with respect and ensuring that all have an opportunity to have a fair hearing does not include excusing abusive conduct such as repeated breaches of court orders. To the contrary, ensuring a fair hearing and a fair process requires the even-handed application of the *Rules* and the enforcement of court orders for all parties. The *Rules* are broad enough that their interpretation and enforcement can and should take into account whether a party has legal representation where that issue is relevant to promote a fair hearing in the circumstances. However, once a determination under the *Rules* results in an order of the court, it is only fair for the orders to be seen as binding and to be enforced with an even hand regardless of parties' representation.
- [70] The Applicant does not really address her non-payment of costs in her materials other than claiming she cannot afford to pay them, and that the Estate should pay them. She does not deal with how those costs orders accumulated and that every step she took in the 2017-2019 litigation was unsuccessful and attracted costs. She does not address why she avoided service of Notices of Examination and when an order of Substituted Service was made, why she still failed to attend. She has glossed over her very serious breach of four outstanding costs orders now totalling close to \$50,000 with interest but demands that the court entertain the new relief she seeks.
- [71] As per Brown J. in *Schwilgin v. Szivy*, 2015 ONCA 816, at some point, costs can no longer compensate for prejudice to a party when the other party refuses to pay them: at para. 23.
- [72] If the nonpayment of costs alone was the issue here, I may have considered a solution such as that put forward by Myers J. in *Baradaran* and stayed the proceedings allowing the Applicant time to pay all of the outstanding costs. However, that is futile in these circumstances given the other findings made by this court, particularly with respect to the Applicant's clear lack of standing and her statements that she will not pay any costs.

### **The Request to Declare the Applicant a Vexatious Litigant**

[73] Section 140 of the *Courts of Justice Act*, 1990, c. C.43, permits a motion by “any person” on notice to deal with persons who persistently institute vexatious proceedings or conduct proceedings in a vexatious manner. If the test is met, the court may order that the litigant cannot commence any further proceeding without leave, continue any current proceeding without leave and impose any other term that is just.

[74] As well, under r. 2.2 of the *Rules*, a vexatious litigant order may be sought by a party in a proceeding against another party in a proceeding on notice.

[75] There is no doubt that the Applicant has been served with the required notice by the Respondent to have her declared a vexatious litigant. She has provided no concrete response to this serious request.

[76] Previous cases have set out the basic principles which the court should consider in determining if a matter is frivolous or vexatious. In *Re Lang Michener et al. v. Fabian et al.*, 59 O.R. (2d) 353, at pp. 358-59.

- a. A vexatious proceeding is one where the issues have already been determined by a court of competent jurisdiction;
- b. A vexatious proceeding is one that cannot succeed;
- c. A vexatious proceeding is one which is brought for an improper purpose which may include the harassment or oppression of opposing parties.
- d. A characteristic of vexatious proceedings is where grounds and issues tend to be repeated and supplemented;
- e. The court should consider the entire history and not just the original cause of action;
- f. The failure to costs from previous unsuccessful proceedings is a factor to be considered when determining if proceedings are vexatious; and
- g. Conduct which includes taking persistent and unsuccessful appeals may also be considered vexatious.

[77] The Ontario Court of Appeal has also commented on vexatious litigants in *Lochner v. Ontario Civilian Police Commission*, 2020 ONCA 720. The Court, at para. 16, referenced a 2019 article written by Justice Yves-Marie Morissette of the Quebec Court of Appeal, entitled “Querulous and Vexatious Litigants as a Disorder of a Modern Legal System”, 24 Can. Crim. L. Rev. 265, in which he commented as follows at pp. 265-66:

Some self-represented litigants never let go. Not only do they resist any reasonable attempt to settle a dispute consensually, but they also forever refuse to accept defeat in the courts. They continue to fight on, in any available forum, until they are forced to stop. Whatever the “initial

dispute” that they had with an employer, a neighbour, an ex-spouse, a relative, a government agency, or any other person or institution, there is a strong probability that this dispute will have evolved and eventually degenerated into an all-out war fought on every front, at first in a tribunal or a court of law, against one or several parties, and later against those parties' lawyers, the lawyers' partners, their professional regulators or their insurers, the court personnel, judges in person, or even the judicial council if its decisions are subject to judicial review. Whenever possible, they will seek leave to appeal to the Supreme Court of Canada.

Among the many self-represented parties, these abnormally belligerent and obdurate litigants only account for a very small percentage of parties who go to court in person and without counsel. But they are a real and threatening burden for other parties and for all stakeholders in the administration of justice (be they the parties themselves or lawyers, judges, court administrators and court personnel).

[78] Justice Morissette, at pp. 274-76 of his article, also listed signs of what he calls a “querulous disposition”:

- The litigant is virtually always self-represented;
  - The litigant’s attitude is characterized by marked obduracy;
  - Persistent reiteration and amplification;
  - Arguments are often unintelligible or highly confused;
  - Written submissions contain much that is not legally relevant to the dispute;
  - The style of written submissions is quite distinctive (opaque and long written materials, faulty terminology and syntax, emphatic tone reinforced by different fonts and styles, multiple appendices and supporting documents, and the expression of a keen desire for moral vindication);
  - Marked lack of due diligence in the advancement of claims;
  - Exhaustion of all rights of review, appeal, or revocation any time there is an adverse judgment;
- Unsustainable allegations and gratuitous complaints against members of the legal profession; and

- Cessation of proceedings only when the litigant cannot pay legal fees and costs.

[79] Almost all of the above “signs” apply to the Applicant, other than a failure to advance her claim. In this case, the Applicant’s efforts to advance her claim were significant to the

point of attempting to proceed with a default hearing of the Application without proper service or notice to the Respondent.

[80] Moreover, the Applicant's abusive, racist and shocking emails sent to the Respondent's counsel cannot be ignored and speak to the egregious conduct of the Applicant.

[81] However, this is not a case like *Lochner*, where the litigant had been engaged in vexatious litigation for more than a decade. In this case, the initial Application may have had some merit but was dismissed. The current Application is without foundation but does not (yet) form a pattern of ongoing abusive litigation.

[82] As such, I make the following findings with respect to the within motion:

a. The Application is an abuse of process for the following reasons:

- i. It is improperly constituted and the relief sought is vague and somewhat unintelligible.
- ii. The Applicant lacks standing as she is neither a beneficiary nor a dependent. Her claims for dependent's relief are without merit or foundation.
- iii. The claims for dependent's relief and any trust claims are statute barred.
- iv. The Applicant has not come to court with clean hands. She has failed to pay all previous costs orders and clearly indicated that she will not pay any costs if they are ordered on this motion.
- v. The fraud claims do not survive the limitation period issues as the Applicant lacks standing to bring them.

b. The Applicant's conduct has been vexatious for the following reasons:

- i. The Applicant's conduct in this proceeding can be labelled as nothing but scurrilous. Her intimidation of the Respondent and her counsel, her treatment of court staff and her racist, abusive emails to Ms. Talukder are appalling.
- ii. The Applicant's attempts to have her Application heard without proper service and notice are an abuse of the court process.
- iii. The Applicant's failure to address the salient issues on this motion (despite repeated requests by the court to do so) are indicative of her distorted view of her meritless case.

- iv. The Applicant insisted on having a Serbian interpreter present despite the fact that at no point did the Applicant require any interpretation from English to Serbian.
- v. The Applicant attempted to “add” claims to her Application through her factum which is improper.
- vi. The Applicant has intermingled her claims with respect to the Jeffrey Estate and the Joseph Estate, going so far as to claim that Jeffrey was also known as Joseph Kerzner. This is a bald and unrealistic attempt to seek support from the Joseph Estate.
- vii. The Applicant refuses to accept that a Certificate of Appointment of Estate Trustee with a Will was issued to Ms. Wolfe in June 2017 and that she has exercised her authority as Estate Trustee pursuant to that Certificate. Her claims that Ms. Wolfe acted without authority are untenable.

[83] The Estate should not be burdened with having to defend meritless claims by the Applicant without the prospect of cost recovery. Given my findings above, parameters must be put on the Applicant’s future attempts to re-litigate groundless claims.

### **Orders and Costs**

[84] Given all of the above and in accordance with my jurisdiction under r. 1.05, I make the following Orders:

- a. The Motion is allowed in part and the Application is dismissed.
- b. While the Applicant has not been declared a vexatious litigant her claims have been found to be an abuse of process and her conduct vexatious. As such, she will be subject to the following requirements regarding any future litigation:
  - i. If the Applicant seeks to initiate any Application in the Superior Court of Ontario, she must obtain leave and provide a copy of this endorsement in her leave application.
  - ii. Any new Application which the Applicant seeks to have issued must be prepared by a lawyer and the Applicant must be represented by counsel throughout. In the event that the Applicant does not comply with this order, the court/filing staff may refuse to accept her materials or respond to her. Court staff are only required to respond to the Applicant’s counsel.
  - iii. The Applicant may not commence any Application without providing proof that she has paid all previous costs owed including the costs of the within motion. Failure to do so will entitle the court office to refuse to issue any process on behalf of the Applicant.

- c. The Estate should be made whole on this motion given the findings made herein. Further, the Estate should never have had to go to the expense of bringing a motion to dismiss what I found to be a claim without foundation and endure the insults perpetrated by the Applicant. The costs sought by the Respondent are entirely reasonable in the circumstances.
- d. The Applicant shall pay the substantial indemnity costs of the Respondent forthwith in the amount of \$16,253.58.
- e. Ms. Talukder may submit a draft order for my review. Approval of the draft order as to form and content by the Applicant is not required.

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C. Gilmore, J.

**Date:** January 12, 2026