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**Court of Appeal for Saskatchewan**  
**Docket: CACV4370**

**Citation: 6517633 Canada Ltd. v Clews  
Storage Management KEHO Ltd. 2026  
SKCA 42**

**Date: 2026-03-24**

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Between:

**6517633 Canada Ltd.**

*Appellant  
(Applicant)*

And

**Clews Storage Management KEHO Ltd.**

*Respondent  
(Respondent)*

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Before: Kalmakoff, McCreary and Drennan JJ.A.

Disposition: Appeal dismissed

Written reasons by: The Honourable Justice Jeffery D. Kalmakoff  
In concurrence: The Honourable Justice Meghan R. McCreary  
The Honourable Justice Jillyne M. Drennan

On appeal from: KGB-RG-00872-2024 (SKKB), Regina  
Appeal heard: March 10, 2026

Counsel: Sterling McLean for the Appellant  
Adam Ailsby for the Respondent

## **Kalmakoff J.A.**

### **I. OVERVIEW**

[1] Stan Sheppard and his company, 6517633 Canada Ltd. [7633], had a business relationship with Dan Davis and his company, Clews Storage Management KEHO Ltd. [Clews], from 2007 to 2017. In that business arrangement, 7633 marketed and sold cattle oilers under a franchise agreement with Clews. When their business relationship ended, 7633 and Clews became competitors. Things turned acrimonious. Litigation followed.

[2] Eventually, Clews obtained an order designating Mr. Sheppard and 7633 as vexatious litigants, pursuant to Rule 11-28(1) of what are now *The King's Bench Rules (6517633 Canada Ltd. v Clews Storage Management KEHO Ltd., 2019 SKQB 320 [VL Order])*. The *VL Order* prohibits Mr. Sheppard and 7633 from instituting any proceedings against Clews or Mr. Davis in the Court of King's Bench without first obtaining leave from a judge of that court.

[3] In May of 2024, 7633 applied for leave to initiate a new proceeding against Clews. In support of its application, 7633 filed an affidavit sworn by Mr. Sheppard. In it, Mr. Sheppard deposed that one of the methods 7633 employs to promote its business is attending trade shows and renting display booth space, so it can meet with, and obtain contact information from, potential customers. Mr. Sheppard also described three incidents that underpinned his proposed proceeding, which were as follows:

- (a) in the fall of 2021, one of Clews' directors attended 7633's booth at a trade show in Red Deer, Alberta, against Mr. Sheppard's wishes;
- (b) in October of 2022, Mr. Sheppard observed persons who he knew to be directors of Clews attend a farm property in Saskatchewan where 7633 keeps some of its cattle-oiler-construction materials, causing him to suspect that they damaged a grain auger; and
- (c) in February of 2024, a salesman employed by Clews attended 7633's booth at a trade show in Lethbridge, Alberta, and remained there until Mr. Sheppard told him to leave.

[4] Based on these three incidents, Mr. Sheppard asserted that he had a “genuine concern” that Clews or its directors, officers or salespersons would continue attending booths that 7633 rented at trade shows, and that they would attempt to gain a competitive advantage by obtaining the names and contact information of 7633’s prospective customers. Mr. Sheppard indicated that he was seeking leave to commence an action to “restrain [Clews] and/or its officers and directors and salespersons from entering upon the real property of the company and any and all rented trade show booths in the Province of Saskatchewan”.

[5] The judge who heard the application declined to grant leave because she determined that the material 7633 had filed in support of its application was insufficient to permit her to conclude there were reasonable grounds for the proposed proceeding (*6517633 Canada Ltd. v Clews Storage Management KEHO Ltd.* (7 May 2024), Regina KBG-RG-00872-2024 (SKKB) [*Decision*]).

[6] 7633 appeals from the *Decision*. It argues that the judge erred by anchoring her reasoning in the fact that 7633 had filed only the affidavit from Mr. Sheppard setting out the factual basis for its proposed proceeding in support of its application, and not a draft statement of claim. 7633 contends that the judge’s focus on this technical procedural shortcoming caused her to overlook the fact that Mr. Sheppard’s affidavit laid out the basis for a reasonable cause of action.

[7] 7633 also asserts that the judge erred by weighing conflicting affidavit evidence to determine whether it had identified a reasonable cause of action.

[8] I am not persuaded that the judge erred in the ways that 7633 alleges. I would dismiss the appeal.

## II. ANALYSIS

### A. Standard of review

[9] A decision concerning whether a party who is subject to a vexatious litigant order should be granted leave to commence a proceeding involves an exercise of discretion. When an appeal is taken from such a decision, the applicable standard of review depends on the nature of the error alleged. Questions of law are reviewed on a correctness standard, while questions of fact or of mixed fact and law are subject to the palpable and overriding error standard of review. Appellate

intervention will be permitted where a judge has made a palpable and overriding error in their assessment of the facts (including by misapprehending or failing to consider material evidence), or where they have committed an error of law by failing to correctly identify the legal criteria governing the exercise of their discretion or by misapplying those criteria. An appellate court is not entitled to substitute its own decision for that of the judge merely because it would have exercised the discretion differently (*Saskatchewan Power Corporation v International Brotherhood of Electrical Workers, Local 2067*, 2025 SKCA 33 at paras 20-21; *MacInnis v Bayer*, 2023 SKCA 37 at paras 38-39; *Kot v Kot*, 2021 SKCA 4 at para 20).

## **B. Governing principles: leave applications by vexatious litigants**

[10] There is nothing in *The King's Bench Rules*, or any relevant statute, that speaks to the legal requirements a vexatious litigant must meet to obtain leave to commence a proceeding. The discretionary decision called for when deciding whether to grant leave requires a judge to balance the interest of the applicant's right to access the court against the harms caused by vexatious litigation. This is because the "access to justice coin" is two-sided and, at times, those who misuse unrestricted access in a damaging way must be curtailed, in order to prevent abuses of the court's process and to spare other litigants from having to invest time, emotional resources and financial capital to defend vexatious proceedings (see, for example, *Director of Maintenance Enforcement v Bahrani*, 2026 SKCA 33 at para 34; and *Canada v Olumide*, 2017 FCA 42 at para 18).

[11] The legal principles that guide the exercise of a judge's discretion in this regard were discussed in *Yascheshen v Allergan Inc.*, 2021 SKQB 33. In that decision, Tochor J. (as he then was) observed that where a person who has been declared a vexatious litigant seeks leave to commence a proceeding, they bear the onus of demonstrating that the proposed action is not an abuse of process and that there are reasonable grounds for it. This is because the imposition of a vexatious litigant order gives rise to a presumption that the person who is the subject of the order litigates in an inappropriate manner (at paras 16-18). After reviewing the legal tests established by the applicable legislation and jurisprudence from other provinces, as well as the provisions of *The King's Bench Rules* that relate to striking of pleadings for disclosing no reasonable cause of action or for abuse of process, Tochor J. articulated the following test for determining whether a vexatious litigant should be granted leave to commence an action:

[40] Therefore, I conclude the appropriate test for determining if a vexatious litigant should be granted leave to commence an action is:

(a) is the proposed proceeding an abuse of process, as generally defined by the conditions set out in Rule 7-9(2)(b) or (e)?; and

(b) are there reasonable grounds for the proposed proceeding, as generally defined by the conditions set out in Rule 7-9(2)(a)?

[12] The test described in *Yashcheshen v Allergan Inc.* is the same in substance as that which is set out in s. 40(4) of the *Federal Courts Act*, RSC 1985, c F-7; s. 140(4)(a) of Ontario's *Courts of Justice Act*, RSO 1990, c C-43; and s. 23.1(7) of Alberta's *Judicature Act*, RSA 2000, c J-2. The *Yashcheshen v Allergan Inc.* test has been consistently applied in the Court of King's Bench in Saskatchewan (see: *Yashcheshen v Law Society of Saskatchewan*, 2021 SKQB 110; *Yashcheshen v Government of Saskatchewan and Ehealth Saskatchewan*, 2022 SKQB 1; and *Yashcheshen v Saskatchewan Government Insurance*, 2024 SKKB 69), and was referred to with some level of approval by this Court in *Patel v Saskatchewan Health Authority*, 2022 SKCA 114.

[13] There is some support in the jurisprudence for the notion that judges should look beyond the sufficiency of the proposed pleadings when a vexatious litigant applies for leave, because there is a residual discretion to deny leave even where the proposed pleadings are adequate. This line of authority suggests that a broader contextual inquiry is called for – one that takes into account other factors that may signal a denial of leave, including the reasons underlying the vexatious litigant order, whether the applicant has a history of not paying costs awards, and whether the proposed claim would be uneconomical to litigate (see, for example, *Gichuru v Purewal*, 2023 BCCA 345).

[14] For the purpose of this appeal, it is unnecessary to determine whether the test set out in *Yashcheshen v Allergan Inc.* is in need of such refinement. I say this for two reasons.

[15] First, both parties in this appeal agreed that *Yashcheshen v Allergan Inc.* accurately defined the applicable test and, accordingly, neither argued that any alteration of that test is necessary.

[16] Second, the type of refinement suggested by *Gichuru v Purewal* – i.e., that judges should retain the discretion to deny leave for reasons not rooted in the applicant's proposed pleadings – would have no bearing on the outcome of this case, as the judge's reasons for dismissing 7633's application were entirely related to the inadequacy of its proposed pleadings. Because the judge found that 7633 had failed to establish reasonable grounds for a proposed proceeding, she did not

need to examine whether leave should be denied on the basis of abuse of process, or for any other reason.

[17] Accordingly, any discussion regarding potential refinement or alteration of the test described in *Yashcheshen v Allergan Inc.* is best left for another day, and for a case where it matters to the outcome.

### **C. Applying the principles**

#### **1. The judge properly examined the substance of the proposed proceeding**

[18] Turning now to the arguments advanced in this case, 7633 does not assert that the judge misidentified the legal test for determining whether leave should be granted; it contends that she misapplied that test. Specifically, 7633 says the judge failed to properly examine the substance of the proposed proceeding because she read a non-existent technical requirement into the applicable test – namely, the filing of a draft statement of claim or a draft originating application – and treated that as a prerequisite to granting leave.

[19] I see no merit to this argument in the context of this appeal.

[20] It is fair to observe that Rule 11-28 does not state that a person who is subject to a vexatious litigant order must file a draft pleading – whether in the form of a statement of claim, application, or originating application – as a precondition to obtaining leave to commence a proceeding. However, it is self-evident that they would be well advised to do so. As set out in *Yashcheshen v Allergan Inc.*, the decision whether to grant leave requires a judge to assess the proposed proceeding through the lens of the conditions for striking pleadings under Rule 7-9(2). That Rule calls for an examination of “the pleading or other document”. Given the exceptional nature of a vexatious litigant order, the resulting presumption that a person who is subject to such an order litigates in an inappropriate manner, and the gatekeeping purpose of a leave requirement, it may be very difficult for a judge to conclude that a proposed proceeding meets the test for a grant of leave without having a draft pleading to examine.

[21] All of that said, I agree that it would have been an error for the judge in this case to decline to examine the substance of 7633’s supporting material just because no draft pleading had been

filed, or to find that 7633's failure to file a draft pleading automatically precluded a grant of leave. But I am not persuaded that the judge made either of those errors.

[22] It is apparent from the *Decision* that the judge examined the substance of the allegations that were at the root of 7633's proposed pleadings. In paragraphs 3 and 4, she thoroughly reviewed and accurately summarized the facts set out in Mr. Sheppard's affidavit and the nature of the relief 7633 purported to seek in the proposed action.

[23] The judge's reasons also demonstrate that she did not view the failure to file a draft statement of claim as fatal to the application. In that regard, she said:

[9] ...[T]he applicant's materials do not provide sufficient information to assess whether there are reasonable grounds for the proposed proceeding. It is not clear from the affidavit whether the applicant seeks a remedy for alleged wrongs committed in the past, whether it seeks an order restraining acts that may occur in the future, or both. Further, the applicant has not provided the court with a sufficient outline of the material facts to identify the real issue in dispute and the cause(s) of action which may arise from those facts. In chambers, counsel for the applicant indicated that the claim arises from the potential loss or theft of information that may occur in the future. Without determining whether this is a cause of action, based on the materials filed, it is not clear this claim is connected to the incidents which are outlined in Mr. Sheppard's affidavit.

[10] In short, I agree with the respondent that the applicant has not filed sufficient materials for me to adequately assess whether there are reasonable grounds for the proposed proceeding. While the applicant's counsel indicates he could not file a statement of claim without leave of the court, he could have filed a proposed pleading. It appears this was done in [*Yashcheshen v Allergan Inc.*, 2021 SKQB 33].

[24] A fair reading of this portion of the *Decision* is that, although the judge observed that it may have been helpful if 7633 had filed a draft statement of claim to clarify the nature of the cause of action being asserted, she did not dismiss the application because of the absence of such a document. To the contrary, she found that, regardless of form, the factual allegations in Mr. Sheppard's affidavit were not sufficient to identify a reasonable cause of action. This ground of appeal cannot succeed.

## **2. The judge did not improperly weigh conflicting evidence**

[25] 7633 contends that the judge erred by weighing conflicting evidence when determining whether a reasonable cause of action had been asserted. I reject this argument as well.

[26] It is well settled that, when considering whether a pleading should be struck for failing to disclose a reasonable cause of action, a judge is not entitled to consider and weigh evidence; they may consider only the pleadings and any particulars furnished with respect thereto (Rule 7-9(3), see also *Sagon v Royal Bank of Canada*, 1992 CanLII 8287 at para 16, 105 Sask R 133 (SKCA); *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 25; and *Wilson v Saskatchewan Water Authority*, 2023 SKCA 16 at para 22). The same considerations apply when assessing whether there are reasonable grounds for a proposed pleading by a vexatious litigant (*Yashcheshen v Allergan Inc.* at paras 78-80).

[27] I see nothing in the *Decision* that even remotely suggests the judge inappropriately considered or weighed evidence when assessing whether there were reasonable grounds for 7633's proposed proceedings. No draft statement of claim had been filed, which meant the judge was left to treat the factual assertions made in Mr. Sheppard's affidavit as his proposed pleadings, and to assess them as she would assess a statement of claim in the context of a strike application under Rule 7-9(2)(a). The judge's reasons demonstrate not only that she was well aware of this, but also that she was alive to the requisite legal test and that she understood her focus was to remain on the sufficiency of 7633's proposed pleading. In that regard, she said the following:

[8] ... With respect to Rule 7-9(2)(a), a pleading may be struck when it discloses no reasonable claim or defence. as the case may be. When an application is brought pursuant to Rule 7-9(2)(a), the focus is on the pleading itself and whether there is a reasonable prospect of success, or whether it is "plain and obvious" that the action cannot succeed: see, for example, *Sagon v Royal Bank of Canada*, (1992) 105 Sask R 133 at 140 (CA). This necessitates the reviewing judge to determine whether sufficient facts have been pleaded to establish the legal elements of a cause of action by considering the whole of the statement of claim: see *Harpold v Saskatchewan (Corrections and Policing)*, 2020 SKCA 98 at para 26.

[28] I also see no basis to conclude that the judge erred in the application of the legal test. Her reasons contain no mention whatsoever of the affidavit evidence Clews filed to oppose 7633's application, so it is difficult to understand how she can possibly be said to have inappropriately weighed that evidence. The judge was also correct, in my view, to find that the material 7633 had filed in support of its application was insufficient to form reasonable grounds for a proposed proceeding. Although Mr. Sheppard's affidavit set out the relief that 7633 purported to seek, the factual assertions he made did not name or identify the elements of any recognizable cause of action that would provide a basis for that relief, no matter how generously the affidavit was read.

[29] Accordingly, there is no room to interfere with the judge’s bottom-line conclusion. This ground of appeal must also fail.

### III. Conclusion

[30] For the foregoing reasons, I would dismiss the appeal. I would award the costs of the appeal to Clews, fixed at \$3,500.

“Kalmakoff J.A.”  
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Kalmakoff J.A.

I concur. “McCreary J.A.”  
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McCreary J.A.

I concur. “Drennan J.A.”  
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Drennan J.A.