

KING'S BENCH FOR SASKATCHEWAN

Citation: **2024 SKKB 69**

Date: **2024 04 19**
Docket: KBG-YT-00051-2024
Judicial Centre: Yorkton

BETWEEN:

ALICIA YASHCHESHEN

APPLICANT

- and -

SASKATCHEWAN GOVERNMENT INSURANCE

RESPONDENT

Appearances:

Alicia Yashcheshen

appearing on her own behalf

FIAT
April 19, 2024

POPESCU C.J.K.B.

Introduction

[1] Between October 26, 2023, and January 23, 2024, Alicia Yashcheshen, a vexatious litigant, has filed five applications for leave to commence an action against Saskatchewan Government Insurance [SGI]. She filed these applications in four different judicial centres.

[2] These applications were brought to my attention, and this fiat addresses

how these applications shall be addressed.

Background

[3] Ms. Yashcheshen was declared a vexatious litigant under Rule 11-28 of *The King's Bench Rules in Saskatchewan v Yashcheshen*, 2020 SKQB 160. The Court of Appeal, in *Yashcheshen v Teva Canada*, 2022 SKCA 49, [2022] 8 WWR 60 [*Teva*], largely upheld the initial order and held Ms. Yashcheshen must obtain leave of the court before commencing any claims or originating applications in the Court of King's Bench.

[4] In *Yashcheshen v Allergan Inc.*, 2021 SKQB 33, the court set out the legal test to be considered when determining if a vexatious litigant may be granted leave to commence a proceeding. The test for leave set out in s. 40(4) of the *Federal Courts Act*, RSC 1985, c F-7, was adopted, which requires the court to be satisfied "the proceeding is not an abuse of process and that there are reasonable grounds for the proceeding".

The Applications for Leave to Commence a Proceeding

[5] I list below a summary of the five applications for leave that Ms. Yashcheshen has brought, all of which relate to claims against SGI:

- (i) October 26, 2023, Judicial Centre of Yorkton: the applicant filed an application *without notice* under Rule 11-28 for leave to commence a claim against SGI relating to injuries and damages she suffered in a motor vehicle accident in Regina, on September 19, 2005.

On October 27, 2023, the court dismissed the *without notice* application but granted leave to the applicant to file an application for leave *with* notice to SGI.

On November 8, 2023, Ms. Yashcheshen filed an appeal from this order to the Saskatchewan Court of Appeal [application i].

- (ii) November 21, 2023, Judicial Centre of Saskatoon: the applicant filed an application *without notice* for leave to commence an action against SGI for injuries and damages she suffered in a motor vehicle accident in Yorkton on April 8, 2000 [application ii].
- (iii) December 8, 2023, Judicial Centre of Regina: the applicant filed an application *without notice* for leave to commence an action against SGI for injuries and damages she suffered in a motor vehicle accident in Regina, on September 19, 2005 [application iii].
- (iv) December 11, 2023, Judicial Centre of Moose Jaw: the applicant filed an application *without notice* for leave to commence an action against SGI for injuries and damages she suffered in a motor vehicle accident in Regina, on September 19, 2005.

This application was rejected by the Local Registrar because of procedural non-compliance [application iv].

- (v) January 23, 2024, Judicial Centre of Yorkton: the applicant filed an application *without notice* for leave to commence an action against SGI for injuries and damages she suffered in a motor vehicle accident in Regina, on September 19, 2005 [application v].

[6] When considered together, the five applications for leave reveal some unusual patterns.

[7] First, after her *without notice* application was dismissed relating to

application i, and after being given leave to re-file her application with *notice* to SGI, Ms. Yashcheshen filed four other *without notice* applications involving SGI. Specifically, she filed three *without notice* applications relating to a motor vehicle accident in Regina on September 19, 2005: applications iii, iv and v. She also filed a *without notice* application in Saskatoon [application (ii)] relating to a motor vehicle accident in Yorkton on April 8, 2000.

[8] Second, Ms. Yashcheshen filed the same or similar applications in four different judicial centres. Four of the five applications relate to the motor vehicle accident in Regina on September 19, 2005, and these applications were filed in Yorkton [applications (i) and (v)], Regina [application (iii)], and Moose Jaw [application (iv)]. As well, Ms. Yashcheshen filed an application in Saskatoon [application (ii)] for leave to commence a claim regarding a motor vehicle accident in Yorkton on April 8, 2000.

The Need for Case Management

[9] In these circumstances, I conclude case management of these applications for leave is necessary. There are two primary reasons for this conclusion.

[10] The first is a desire to avoid a multiplicity of proceedings. The Saskatchewan Court of Appeal has frequently reiterated the importance of avoiding a multiplicity of proceedings. In *Canadian Pacific Railway Company v Kelly Panteluk Construction Ltd.*, 2020 SKCA 123 at para 53, 17 CLR (5th) 138, the Court noted that the rule against a multiplicity of proceedings is a basic common law principle, which is based on “concerns that multiple proceedings will increase the cost and complexity of litigation, and can or may lead to inconsistent results that undermine the credibility of the system and create a potential for injustice.”

[11] In the circumstances of this case, there is a possibility of a multiplicity of proceedings if Ms. Yashcheshen’s applications for leave to commence are not

considered by a single case management judge. Ms. Yashcheshen seeks to commence multiple proceedings (four) relating to the same motor vehicle accident, against the same defendant (SGI). If she is granted leave to proceed with more than one action, this will greatly increase the cost and complexity of litigation and may lead to inconsistent results. The need for one judge to manage all of these applications with reference to each other is thus required to avoid the possibility of a multiplicity of proceedings.

[12] The second related reason that case management of these applications for leave is necessary is to prevent an abuse of the court's process. The Saskatchewan Court of Appeal in *Onion Lake Cree Nation v Stick*, 2018 SKCA 20, [2018] 5 WWR 111, noted at paragraph 54 that "it is an abuse of process to commence two lawsuits between the same parties that effectively deal with the same subject matter." Here, Ms. Yashcheshen has sought leave to commence four actions relating to the same motor vehicle accident in Regina, in four different judicial centres.

[13] I will now relate the relevant legal principles that grant me the authority to issue a case management order in these circumstances.

[14] Section 4-1 of *The King's Bench Act*, SS 2023, c 28, provides that the Chief Justice of the Court of King's Bench "shall coordinate and apportion the business of the court and assign the judges to hold court and chambers". In *Huard v The Winning Combination Inc.*, 2022 SKCA 130, in the context of a class action matter, the Saskatchewan Court of Appeal recognized the jurisdiction of the Chief Justice of the Court of King's Bench to assign and schedule judges to a case management function (see paragraphs 20 and 23).

[15] I find that the authority granted to me to coordinate and apportion the business of the court and to assign judges to hold court under *The King's Bench Act* provides me the statutory authority to designate a specific judge to hear and determine

specific classes of applications, and more specifically to case manage Ms. Yashcheshen’s applications for leave to commence.

[16] Further, I find that such an order is permitted under the inherent jurisdiction of the Court to control its own process relating to vexatious litigants. In *Barth v Saskatchewan (Social Services)*, 2021 SKCA 41, 54 RFL (8th) 281 [*Barth*], the Court of Appeal reiterated that they had inherent jurisdiction to control processes relating to litigants declared vexatious and to prohibit the commencement of proceedings without leave. The Court of Appeal’s vexatious litigant rules were found to be a codification of the Court’s inherent jurisdiction to prevent its process from being abused.

[17] The comments in *Barth* relating to inherent jurisdiction over vexatious litigants were deemed to equally apply to the Saskatchewan Court of King’s Bench in *Teva*. The Court of Appeal noted at paragraph 94 that vexatious litigant rules “recognise an aspect of a superior court’s inherent jurisdiction to prevent its processes from being abused and to protect the proper administration of justice” and that vexatious litigant rules impose controls on the exercise of a right to access the courts.

[18] Rule 11-28 of *The King’s Bench Rules* specifically codifies this Court’s inherent jurisdiction to declare someone vexatious and to prohibit them from commencing or continuing a proceeding without leave of the Court. Further, Rule 1-5(2)(c) provides that the Court has the authority to “give orders or directions or make a ruling with respect to an action, application or proceeding or a related matter.”

[19] Authority for case management powers likewise arise through the inherent jurisdiction of the court: see, for example, *Thompson v International Union of Operating Engineers Local No. 955*, 2017 ABQB 210 at para 69, 47 Alta LR (6th) 300 [*Thompson v International Union*], leave to appeal denied 2017 ABCA 193. Case

management orders are designed to assist litigants in moving towards resolution and such orders are sometimes made regarding litigants who have been declared vexatious. For example, see: *1985 Sawridge Trust v Alberta (Public Trustee)*, 2017 ABQB 548 at para 110, 13 CPC (8th) 92; *Re Gauthier*, 2017 ABQB 555 at para 84, 87 CPC (7th) 348; *Onischuk v Edmonton (City)*, 2017 ABQB 647 at para 35; and *Lymmer (Re)*, 2018 ABQB 859 at para 138.

[20] More specifically, it is not uncommon for a specific judge to be assigned to hear applications brought by litigants who were required to obtain leave before filing an application. For example, in *Toller v Hnatiuk*, 2018 ABQB 430, the Alberta Court of Queen’s Bench Executive Counsel notified a litigant that the Associate Chief Justice had assigned a judge as Case Management Justice relating to their matter and that all further applications required leave from that judge prior to filing. This was done prior to a formal vexatious litigant declaration/order being made.

[21] Similarly, in *Association of Professional Engineers and Geoscientists of Alberta v Drover*, 2021 ABQB 511, it was ordered that, to commence or continue an appeal, application or other proceeding in the Alberta Court of Queen’s Bench, the litigant had to submit an application for leave to the Chief Justice, the Associate Chief Justice or their designate.

[22] Procedural restrictions and/or direction need not be given at the time the vexatious litigant order is made and can be added or amended anytime thereafter. In *Ubah v Canadian Natural Resources Limited*, 2020 ABCA 209, the Alberta Court of Appeal outlined the procedural history relating to a vexatious litigant in Alberta in some detail. A vexatious litigant order had been made by the Alberta Court of King’s Bench, and subsequent procedural restrictions were thereafter imposed on the vexatious litigant after the initial order. The Court of Appeal noted at paragraph 7 that one of the vexatious litigant orders explicitly provided that the Chief Justice of Alberta or their designate

could vary “any of its conditions pertaining to procedures in the Court of Appeal, including the process for seeking permission to appeal.”

[23] Likewise, in *Thompson v Alberta Labour Relations Board*, 2018 ABQB 220, leave to appeal refused, the Alberta Court of Queen’s Bench reaffirmed a previously-issued vexatious litigant order, including the general requirement for the litigant to obtain leave to file, but added an additional condition to the order, being that the application for leave would only be accepted if the litigant was represented by a member of the Law Society of Alberta.

[24] The above-noted cases demonstrate that this Court has the inherent jurisdiction to appoint a case management judge in relation to vexatious litigants and to impose procedural restrictions and/or orders to prevent an abuse of process. The ability to issue procedural orders relating to a vexatious litigant can be made and amended after the person has been declared vexatious.

[25] As set out in *Thompson v International Union* at para 65, “The Court’s ultimate function is to facilitate resolution of disputes.” Ms. Yashcheshen, like any other litigant, is entitled to access the courts for this purpose. That said, the Court has the inherent jurisdiction to establish processes and procedures to prevent an abuse of process and to ensure the proper administration of justice. The purpose of this decision is to clarify the process by which Ms. Yashcheshen can seek leave to commence pursuant to Rule 11-28. In other words, it provides orders or directions to Ms. Yashcheshen relating to actions, applications and proceedings through case management.

[26] In the circumstances of this case, two of the five of Ms. Yashcheshen’s applications for leave to commence have been addressed; one through a fiat delivered by the Court and one was rejected by the Local Registrar. Three of the applications for

leave remain to be addressed [applications (ii), (iii) and (v)]. Here, case management of the remaining three applications for leave to commence will benefit Ms. Yashcheshen, SGI and, more broadly, the administration of justice. This order will ensure that the purpose and intention of *The King's Bench Rules* as described in Rule 1-3 are met, and will prevent an abuse of process and avoid a potential duplicity of proceedings.

Summary of Orders

[27] Ms. Yashcheshen is now subject to the Court of Appeal order which requires her to obtain leave before instituting proceedings such as claims or originating applications. This order, of course, remains in effect.

[28] However, I also make the following orders which are designed to assist the litigants in any applications made by Ms. Yashcheshen in Saskatchewan for leave to commence a proceeding:

- (a) The three remaining applications by Alicia Yashcheshen for leave to commence a proceeding, as outlined above in applications (ii), (iii), and (v), shall be directed to the Associate Chief Justice of the Court of King's Bench for Saskatchewan for determination;
- (b) Any other application filed by Alicia Yashcheshen for leave to commence a proceeding in Saskatchewan shall be directed to the Associate Chief Justice, or such other judge that may be designated by the Chief Justice of the Court of King's Bench for Saskatchewan;
- (c) Any application for leave to commence a proceeding must be accompanied by an affidavit:

- i. Attaching a copy of the pleading, application or process that Alicia Yashcheshen proposes to issue or file;
 - ii. Deposing fully and completely to the facts and circumstances surrounding the proposed claim or proceeding, so as to demonstrate that the proceeding is not an abuse of process and that there are reasonable grounds for it;
 - iii. Indicating whether Alicia Yashcheshen has ever sued some or all of the defendants or respondents previously in any jurisdiction or Court, and if so providing full particulars; and
 - iv. Undertaking that, if leave is granted, the Order granting leave to proceed, and the affidavit in support of the Order will promptly be served on the defendants or respondents.
- (d) The Associate Chief Justice, or such other judge that may be designated by the Chief Justice, may, at any time, direct that notice of an application for leave to commence a proceeding be given to any other person;
- (e) The Associate Chief Justice, or such other judge that may be designated by the Chief Justice, may, at any time, make any other procedural orders considered necessary to determine whether leave to commence a proceeding should be granted;
- (f) The Local Registrars of every judicial centre in the Province of Saskatchewan shall be provided with a copy of this order and shall

forward any applications by Alicia Yashcheshen for leave to commence a proceeding in Saskatchewan to the Associate Chief Justice, or any other judge that may be designated by the Chief Justice; and

- (g) The Local Registrar shall also provide a copy of this order to Saskatchewan Government Insurance through its legal counsel.

“M.D. POPESCU” C.J.K.B.
M.D. POPESCU