

CANADA / JUDGMENT

A.N.H. v. L.D.G.

2022 BCCA 155

COURT

British Columbia Court of Appeal

DECIDED

2 May 2022

Source: bccourts.ca · Research copy typeset by Esheria. Not court-issued or certified.

2022 BCCA 155 A.N.H. v. L.D.G.

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

A.N.H. v. L.D.G.,

2022 BCCA 155

Date: 20220502

Dockets: CA43916; CA43917

Docket: CA43916

Between:

A.N.H.

Appellant

(Plaintiff)

And

L.D.G.

Respondent

(Defendant)

- and -

Docket: CA43917

Between:

A.N.H.

Appellant

(Plaintiff)

And

L.D.G.

Respondent

(Defendant)

Before:

The Honourable Madam Justice Bennett

The Honourable Madam Justice Fisher

The Honourable Mr. Justice Marchand

On appeal from: An order of the Supreme Court of British Columbia, dated August 8, 2016 (A.N.H. v. L.D.G., Vernon Docket S53557 and S53558).

The Appellant, appearing in person

(via teleconference):

A.N.H.

The Respondent, appearing in person

(via videoconference):

L.D.G.

Place and Date of Hearing:

Vancouver, British Columbia

February 2, 2022

Place and Date of Judgment:

Vancouver, British Columbia

May 2, 2022

Written Reasons of the Court

Summary:

Application to review or vary three orders of justices sitting in chambers, and cross-application for various relief. Held: Applications dismissed, cross-applications granted in part, and the appellant is prohibited from filing any document in this Court, with limited exceptions. The

appellant is a vexatious litigant in high-conflict family litigation and was previously found to have engaged in family violence against the respondent. The appellant did not establish any error of law or principle made by any of the judges whose decisions were reviewed. The appellant is enjoined from serving the respondent by any electronic means, as he used e-courier services to continue to harass and monitor the respondent. The respondent's application to amend the style of cause is granted.

Reasons for Judgment of the Court:

Overview

- [1] A.N.H. and L.D.G. have been involved in what is known as "high-conflict family litigation" for many years. These appeals are wrongly brought in the names of the parties' children by A.N.H. as "litigation guardian". For reasons outlined below, we have amended the style of cause to remove the names of the children, and initialize the reasons. The style of cause on the order in the lower court is A.N.H. v. L.D.G.
- [2] This appeal consolidates the following four outstanding matters in relation to CA43916 and CA43917:
 - a) A.N.H.'s application to review an order of Justice DeWitt-Van Oosten, pronounced on September 2, 2021, dismissing his application for leave to appeal an order refusing to adjourn a leave application in the B.C. Supreme Court;
 - b) A.N.H.'s application to review an order of Justice Stromberg-Stein, pronounced on October 6, 2021, granting him an extension of time to file materials in support of his application to vary the order of Justice DeWitt-Van Oosten, but refusing further extensions of time;
 - c) A.N.H.'s application to review an order of Justice MacKenzie, pronounced on November 16, 2021, refusing a further extension of time regarding his application to vary the order of Justice DeWitt-Van Oosten; and
 - d) L.D.G.'s application for various orders.
- [3] These reasons resolve all of the parties' outstanding matters in this Court. All of the files in this Court are now closed.

Background

- [4] A.N.H. has been found to be a vexatious litigant in both this Court and the Supreme Court of British Columbia. His numerous appearances have resulted in over 20 published decisions, and his response to findings made against him has included bringing unmeritorious appeals and actions against the judges who made those findings. Given their sheer volume, we have not included all of these decisions in the following summary.

- [5] A.N.H. and L.D.G. met in 2000 and began a relationship in 2005. In 2008, they had their first child. In April 2009, A.N.H. brought an application in the Provincial Court of British Columbia for custody, guardianship, and access to the child. He brought that application without notice, after driving L.D.G. and their child to the airport so they could visit family in Saskatchewan. He never served his supporting affidavit, notice of motion, or the order on L.D.G. until March 2010, when he made another application--again without notice--in the Supreme Court of British Columbia, ordering L.D.G. to return the child. Ever since that second application, the parties have been constantly involved in litigation.
- [6] In June 2010, the parties had their second child.
- [7] In 2012, after a 38-day trial before Justice Cole, the judge made orders respecting guardianship, child support, and spousal support: 2012 BCSC 1313; 2012 BCSC 1683. He refused to allow L.D.G. to move back to Saskatchewan with the children and ordered joint custody.
- [8] In 2014, the parties appeared before Justice Cole again. Justice Cole found A.N.H. to be in contempt for failing to meet his child and spousal support payments and concluded that A.N.H. had structured his finances to avoid support payments: 2014 BCSC 1784. Later that year, Justice Cole found that A.N.H. had engaged in family violence, allowed L.D.G.'s application to move back to Saskatchewan with the children, and ordered that she would make all significant decisions in respect of the children: 2014 BCSC 1875 at paras. 134-136, 142. In separate appeals, A.N.H. appealed the latter orders unsuccessfully--largely due to his continuous default of court orders for support--but he was later successful in challenging the finding of contempt: 2015 BCCA 268; 2016 BCCA 6. His attempt to reopen his first appeal was unsuccessful, and this Court critiqued his "stonewalling" by filing obviously irrelevant material and flouting directions and orders: 2016 BCCA 159.
- [9] Following those appeals, A.N.H. returned to the Supreme Court by filing new actions, purportedly as the children's litigation guardian, against L.D.G. and her mother. He alleged that L.D.G. had defamed him, conspired with the Canada Revenue Agency, and acted in breach of trust with respect to some gold coins held for the children. Justice Abrioux, then of the Supreme Court, granted an application to strike the action with respect to the gold coins, as it had been improperly brought and A.N.H. had no standing as the children's litigation guardian: 2016 BCSC 1559.
- [10] A.N.H. brought four appeals from orders made by Justice Abrioux throughout 2016, partly on the basis of Justice Abrioux's alleged bias. L.D.G. sought that the four appeals be struck out or stayed, and that A.N.H. be declared a vexatious litigant in both this Court and the court below. In this Court, A.N.H. was declared a vexatious litigant and prohibited from commencing appeals against L.D.G. or any of her family without leave: 2017 BCCA 216. Justice Newbury stayed the appeals. She recognized the serious nature of declaring A.N.H. a vexatious litigant but ultimately held that such an order was necessary:

- [22] While in this case the majority of vexatious conduct on [A.N.H.'s] part has taken place in the Supreme Court of British Columbia, there are two factors that amplify the seriousness of his conduct in this court - the extreme pressure that it has put on [L.D.G.] and the children; and the fact that [A.N.H.] insists on filing (usually very shortly before the relevant hearing) volumes - literally hundreds if not thousands of pages - of materials with every application, no matter how insignificant. Virtually every affidavit has attached to it other affidavits and their exhibits, with the result that any substantive issues he might raise or response he might make, are simply lost in a sea of paper. No judge can digest such a stream of irrelevancies on a regular basis; and few litigants could afford to pay counsel to review such materials carefully. Certainly [L.D.G.] cannot.
- [23] It is these factors, together with his filings in this court, that lead me to conclude that [A.N.H.] has been using the judicial process in a manner calculated to divert attention from the real issues outstanding between the parties - his annual income, the amount of support he should pay, and his rights and obligations as a parent. Even [A.N.H.] admits that he is "tired" as a result of the litigation, and there are more than a few judges who feel the same.
- [11] Around the same time, Justice Abrioux considered, of his own motion, whether he needed to recuse himself from the vexatious litigant application in the court below given the allegations of bias but ultimately found that he need not: 2017 BCSC 1246.
- [12] Shortly after that, A.N.H. was also declared a vexatious litigant in the Supreme Court of British Columbia: 2017 BCSC 1249. Justice Abrioux found that the 2014 order allowing L.D.G. to relocate to Saskatchewan was the "genesis" of A.N.H.'s vexatious conduct, as he "essentially developed a 'scorched earth' approach to the litigation" as a result: paras. 26, 30. He highlighted the adverse impact of A.N.H.'s actions on the children, L.D.G., and his own health: paras. 32-35. He held that the same factors that Justice Newbury considered also applied to A.N.H.'s conduct in the Supreme Court; if anything, his conduct was "more egregious" given how long his conduct had persisted, the number of applications and last-minute filings, and the litigation in relation to the gold coins, among other issues:
- [44] In so far as documents are concerned, in the time frame of less than a year since I first became involved in the litigation between the parties when I heard the Gold Coins application, [A.N.H.] has filed thousands of pages of materials. In support of his application to adjourn the SC-VLA and seek production of documents, [A.N.H.] filed two affidavits each of which, I estimate, was in excess of 1,000 pages with approximately 750 pages of each affidavit containing identical exhibits.
- [45] [L.D.G.'s] application record in support of the SC-VLA contained 7 tabs in what I would describe as an average size black binder. [A.N.H.'s] response materials consisted of 11 very large binders totalling what I can only estimate as being in excess of 10,000 pages of materials.

- [46] During his submissions on May 30, 2017, [A.N.H.] indicated that he did not intend to refer to many of the contents of those materials. In fact I estimate that I was taken to 10, perhaps 20, pages at most.
- [47] Viewed from this perspective, it is not surprising that [A.N.H.] is "burnt out" and stressed. His conduct, quite apart from its physical and emotional impact on him, is likely also affecting the hours he can work as a dental surgeon, thereby influencing his ability to earn an income and adhere to his court ordered support payments. During his submissions [A.N.H.] indicated that he would be significantly reducing the hours of his dental practice during the summer of 2017 due to his need to attempt to recover from his ongoing physical and emotional condition caused by the litigation. I note that as at April 2017, arrears in support totalled approximately \$450,000.
- [50] For the reasons I have outlined I have concluded that [A.N.H.] has not just "crossed the line". He has stepped far beyond its boundaries and he has absolutely no regard or appreciation for the concept of proportionality.

As a result, A.N.H. was also enjoined from instituting legal proceedings in the Supreme Court against L.D.G. or any members of her family without leave.

- [13] From late 2018 to 2020, A.N.H. repeatedly sought leave to appeal various orders and to vary refusals to grant leave. His conduct during this time is summarized in Justice DeWitt-Van Oosten's decision being reviewed, and we will address it more thoroughly below.
- [14] Meanwhile, A.N.H. also made complaints to the Canadian Judicial Council and commenced actions against Justice Cole, Justice Abrioux, the Attorneys General of Canada and British Columbia, and Chief Justice Hinkson. His action was struck by Justice Betton, without leave to amend, as disclosing no reasonable prospect of success and being vexatious and an abuse of process: 2019 BCSC 1106. Justice Betton further enjoined A.N.H. from instituting any legal proceedings--and not just those against L.D.G.--in the Supreme Court without first obtaining leave. An appeal from these orders was dismissed: 2021 BCCA 475.
- [15] To date, A.N.H. continues to be in significant arrears on both his support payments and costs that have been awarded against him. Although Justice Cole had initially ordered child support in the amount of \$7,900 per month and spousal support in the amount of \$9,000 per month, Justice Abrioux varied the child support to \$4,224 per month and retroactively terminated the spousal support: 2018 BCSC 2184.
- [16] This brings us to the decisions being reviewed.

Decisions Being Reviewed

- [17] A.N.H. seeks discharge or variation of three orders by judges of this Court, sitting in chambers, pursuant to s. 9(6) of the Court of Appeal Act, R.S.B.C. 1996, c. 77 [Act].

Order of Justice DeWitt-Van Oosten: 2021 BCCA 325

- [18] The first of these orders was made by Justice DeWitt-Van Oosten. While reasons were under reserve in this Court following the June 7, 2021 hearing of the appeal from Justice Betton's orders striking A.N.H.'s notice of civil claim, A.N.H. returned to the Supreme Court on June 23, 2021 to seek leave to file yet another notice of civil claim and an application that Justice Betton recuse himself. Justice Betton refused to recuse himself, adjourned generally the application for leave pending this Court's decision (which was reserved until December 23, 2021), and directed the parties to fix a date to schedule the continuation of contempt applications. One month later, on July 23, 2021, A.N.H. brought a notice of motion in this Court, seeking leave to appeal Justice Betton's order.
- [19] At the hearing of this motion--which had already been adjourned a week from when it was originally scheduled--A.N.H. advised that he was not ready to address the merits of his proposed application for leave. He argued that Justice Betton's reasons for judgment were not yet available and he sought to have his application for leave to be heard at the same time as two other applications for leave that he had brought between late 2018 and 2020, as mentioned above at para. 12. These other applications were from orders appointing Justice Betton as the case management judge and dismissing A.N.H.'s application for leave. Around the same time, Justice Fenlon had denied leave to appeal several orders of Justice Abrioux and the appellant had filed a motion to vary her order but did not pursue this to a hearing. Before Justice DeWitt-Van Oosten, A.N.H. also asked this Court to declare a reasonable apprehension of bias and order recusal in the ongoing trial court proceedings or, as alternative relief, to refer the matter to the Supreme Court of Canada.
- [20] Justice DeWitt-Van Oosten ultimately dismissed the motion without an assessment of its merits. She declined to accept further material or submissions from the appellant, as he had already filed over 3,000 pages of materials and L.D.G.'s arguments were responsive to A.N.H.'s motion and consistent with her materials. Justice DeWitt-Van Oosten raised a concern that she did not have jurisdiction, sitting alone, to grant A.N.H. the relief he sought. However, in light of A.N.H.'s litigation conduct and his vexatious litigant status, she found that it would bring the administration of justice into disrepute if she considered the relief sought while A.N.H. remained non-compliant with court orders. She highlighted several factors, which included the following:
- a) A.N.H. had been on notice since at least 2015 that a failure to comply with court orders could result in courts declining to hear matters or dismissing them without determinations on their merits;
 - b) A.N.H. did not dispute that he was in arrears on spousal support and had not paid costs awards, and his explanations were unconvincing for the same reasons that they were unpersuasive to this Court when it dismissed A.N.H.'s appeal without hearing its merits in 2015 BCCA 268;

c) allowing A.N.H. to proceed would render costs awards against him meaningless despite their role in discouraging frivolous claims, encouraging settlement, and deterring abusive proceedings; and

d) A.N.H.'s litigation conduct both overwhelmed L.D.G., who was also a self-represented litigant, and unnecessarily used judicial resources.

[21] As a result, Justice DeWitt-Van Oosten dismissed the motion in its entirety and awarded L.D.G. costs. Notably, she also built on the original vexatious litigant award to order that:

- a) A.N.H., or anyone acting on his behalf, shall not file or attempt to file, by any means whatsoever, any document in the Court of Appeal for British Columbia, including any application for leave to bring or commence proceedings, under files CA43916, CA43917, CA43942, or CA43943, or in any other matter that is subject to the May 2017 vexatious litigant order; unless A.N.H. has first established, on application and to the satisfaction of the registrar or a justice of the Court of Appeal, that he has paid all outstanding fixed and assessed costs awarded against him in this Court and the British Columbia Supreme Court in proceedings involving L.D.G., her mother or any of her family members; and,
- b) the Court of Appeal's registry staff are authorized to discard any document that is submitted for filing in contravention of this order.

[22] However, she clarified that her order did not apply to any notice of motion and supporting material filed by A.N.H. for the purpose of seeking a discharge or variation of her order, pursuant to s. 9(6) of the Act.

Order of Justice Stromberg-Stein: 6 October 2021, CA43916, CA43917

[23] The second order being reviewed is an order of Justice Stromberg-Stein, with unpublished oral reasons for judgment given on October 6, 2021.

[24] A.N.H. sought to abridge the time to hear his motion to vary Justice DeWitt-Van Oosten's order and extend the deadlines to file materials for this motion. Justice Stromberg-Stein granted both applications. Despite A.N.H.'s justifications that included conflicts, business, preparation for other litigation, and the death of a patient, Justice Stromberg-Stein noted that the materials were almost two weeks late and she could see no reason why the materials still had not been filed. Consequently, while the extension was granted, she ordered that A.N.H. would receive no further extensions. She granted costs to L.D.G.

Order of Justice MacKenzie: 16 November 2021, CA43916, CA43917

[25] The third order that A.N.H. seeks to vary or discharge is an order of Justice MacKenzie, with unpublished oral reasons for judgment given November 16, 2021. A.N.H. failed to meet the filing deadline set by Justice Stromberg-Stein and sought a further extension of time.

- [26] Justice MacKenzie reviewed the factors in *Davies v. C.I.B.C.* (1987), 15 B.C.L.R. (2d) 256 at 259-260, [1987] B.C.J. No. 1497 (C.A.) and found that granting the extension of time was not in the interests of justice. Although she found that A.N.H. had an intention to seek a s. 9(6) review and L.D.G. was aware of this intention, the application was doomed to fail and A.N.H.'s explanation for the delay was not persuasive. Granting him the extension of time would not be in the interests of justice given Justice Stromberg-Stein's order that he not be granted any further extensions of time, the unreasonableness of attempting to file a 4,447-page motion book at 4:00 p.m. on the date of the filing deadline, and the abusiveness of filing such unnecessarily lengthy materials. Justice MacKenzie found that A.N.H. "relies on the consequences of his own abusive litigation conduct to ask this Court for the indulgence of an extension of time": para. 32.
- [27] Finally, Justice MacKenzie addressed the cross-application by L.D.G. She found that, having already dismissed the application for an extension of time, it would be inappropriate to make the following orders sought by L.D.G.:
- prohibiting A.N.H. from serving materials on her by e-courier;
 - imposing page limits for materials filed by A.N.H. in all proceedings in this Court relating to L.D.G. and her family and friends;
 - setting special costs for any application A.N.H. brings without an entered order; and
 - amending the style of cause to remove the children's names.

L.D.G.'s Applications

- [28] In addition to A.N.H.'s applications under s. 9(6), L.D.G. makes several applications. The notice of motion was initially scheduled to be heard before Justice Harris, who advised the parties by letter dated December 19, 2021 that the relief sought was not within his jurisdiction as a single justice. L.D.G. seeks the following relief:
- that the Court shorten the time provided in the Act to hear her notice of motion;
 - that A.N.H.'s notice of motion to set aside Justice MacKenzie's order be dismissed;
 - that A.N.H.'s 4,782-page motion book not be filed and the appeal dismissed;
 - that A.N.H. be prohibited from making s. 9(6) applications unless he is represented by counsel in good standing;
 - that A.N.H. is not the children's litigation guardian and he be prohibited from using their names in the style of cause and that the style of cause be amended to remove the children's names;
 - that A.N.H. be enjoined from serving L.D.G. by email or any other digital or electronic method; and

- g) costs in her favour.

Issues

[29] In our view, combining the various applications, the issues can be stated as follows:

- a) Did any of Justices DeWitt-Van Oosten, Stromberg-Stein, or MacKenzie err in their orders made in chambers?
- b) Should A.N.H. be enjoined from making further applications in this Court?
- c) Should A.N.H. be barred from serving L.D.G. by email, e-courier, or any other electronic or digital method?
- d) Should A.N.H. be barred from commencing actions as the litigation guardian for the children, and should the style of cause of any actions he has started as litigation guardian be amended to remove the children's names?
- e) What order for costs should be made?

[30] The remainder of L.D.G.'s cross-application is encompassed by the first issue.

Appeal

A.N.H.'s Position

- [31] A.N.H.'s written submissions focus on the threshold required to seek a variation of a parenting time or parental responsibility order. He alleges that Justice DeWitt-Van Oosten knew that the children were victims of family violence perpetrated by L.D.G. and makes allegations of parental alienation. He submits that Justice Betton did not carry out the duties of a trustee and engaged in a breach of trust, and that Justice DeWitt-Van Oosten "chose to protect and coverup [sic] Betton J.'s subversion of justice". He argues that Justice DeWitt-Van Oosten, too, did not carry out the duties of a trustee by failing to act as required by law, given Justice Betton's refusal to analyze the best interests of the children in light of the material changes in their circumstances. A.N.H. submits that she relied on Justice Newbury's reasons in declaring him a vexatious litigant, which were in themselves based on errors of fact.
- [32] With respect to the order of Justice Stromberg-Stein, A.N.H. suggests that she did not address the fact that the late-filing was out of his control. He avers that the order was prejudicial to him because L.D.G. was awarded costs when she refused to consent to the extension of time, thus demonstrating a reasonable apprehension of bias.
- [33] He submits that Justice MacKenzie made palpable and overriding errors by failing to review all the evidence before her, not considering the "slip rule", coming to an illogical conclusion, not addressing that A.N.H. and the children are "victims of crime", and exercising her discretion improperly.

[34] Finally, throughout his argument, he alleged that there is a "systemic contagion" that has resulted in various justices--including those whose orders are being reviewed--following an "internal policy" to cover up Justice Cole's "criminal misconducts".

L.D.G.'s Position

[35] L.D.G. submits that a "stricter vexatious litigant order", of the Court's own motion, would be appropriate so that the "loophole" in s. 9(6), which has allowed A.N.H. to continue bringing applications for leave and motions to vary their refusals, can be closed. She says that, on its face, the vexatious litigant order in the Supreme Court is a "wonderful protective order", but in reality, she continues to face baseless allegations of abuse. She stresses the importance of protecting the children's identities by "at least preventing [A.N.H.'s] gross misuse of the children's names in any style of cause in [this Court]".

[36] She submits that A.N.H.'s non-compliance with court rules, orders, and processes is calculated to maximize the unfairness and pressure she experiences. She says she experiences threats of violence and has seen a similar escalation in the orders sought against her. She avers that A.N.H. is wealthy and has the capacity to pay all his arrears and court costs--but he chooses not to.

Analysis

Did any of the chambers judges err?

[37] Section 9(6) of the Act provides that:

9 (6) The court may discharge or vary any order made by a justice other than an order granting leave to appeal under section 7.

[38] An application to vary or discharge the order of a chambers judge is not a hearing de novo. Rather, as set out in *Haldorson v. Coquitlam (City)*, 2000 BCCA 672, the question is whether the chambers judge erred in law, in principle, or by misconceiving the facts:

[7] It comes to this: that the review hearing is not a hearing of the original application as if it were a new application brought to a division of the court rather than to a chambers judge, but is instead a review of what the chambers judge did against the test encompassed by asking: was the chambers judge wrong in law, or wrong in principle, or did the chambers judge misconceive the facts. If the chambers judge did not commit any of those errors, then the division of the court in review should not change the order of the chambers judge.

[39] In our view, A.N.H. has failed to establish that any of the chambers judges erred.

- [40] His allegations against Justice DeWitt-Van Oosten personally, with respect to bias or breaches of fiduciary duties, are completely unfounded. Justice Newbury's order has not been set aside, and reliance on her reasons does not amount to an error in law or principle. It is important to remember the issue that was before Justice DeWitt-Van Oosten: whether leave to appeal Justice Betton's adjournment of his leave application, pending this Court's decision, which was under reserve at the time, should have been granted.
- [41] Ultimately, Justice DeWitt-Van Oosten dismissed the application for leave without any consideration of the merits. She relied on multiple decisions of this Court to find that she had the discretion to refuse to hear the application on the basis of A.N.H.'s non-compliance with court orders: see *Larkin v. Glase*, 2009 BCCA 321; *K.P.B. v. A.S.R.*, 2016 BCCA 382. As those cases demonstrate, this is a highly discretionary decision by the chambers judge in order to protect the administration of justice. It is our view that Justice DeWitt-Van Oosten did not err: she reviewed the record and the litigation history, finding that A.N.H. had continually and disdainfully disregarded the court's processes such that it would bring the administration of justice into disrepute to consider the merits of his application. We agree.
- [42] Similarly, Justice Stromberg-Stein did consider A.N.H.'s explanation that the delay was out of his control--and she rejected it, finding that this did not explain why the materials still had not been filed two weeks late (and despite that, granted him an extension of time to file his material). She granted costs to L.D.G., as she did not accept A.N.H.'s explanation for delay, despite granting the order. A.N.H. seeks to review Justice Stromberg-Stein's order that he not be allowed any more extensions, and the costs order against him. There is no error in principle or in law, nor is it a misconception of the evidence. Again, A.N.H.'s allegations of bias and prejudice are unfounded.
- [43] With respect to the review of Justice MacKenzie's orders, we find A.N.H. has not met the test established in *Haldorson*. The "slip rule" on which A.N.H. relies has no application. We do not see how her conclusion was illogical or how her alleged failures to review all the evidence amount to an error in law or in principle.
- [44] Accordingly, we dismiss each of A.N.H.'s applications under s. 9(6). We turn now to the question of whether the vexatious litigant order should be broadened.

Should A.N.H. be enjoined from making further applications to this Court?

- [45] As mentioned, L.D.G. perceives a "loophole" arising from the interaction of the vexatious litigant order, pursuant to s. 29 of the Act, and A.N.H.'s right to seek review of leave applications pursuant to s. 9(6). We would not consider this a "loophole", but it is a basis to invoke a Houweling order.
- [46] As this Court stated in *Houweling Nurseries Ltd. v. Houweling*, 2010 BCCA 315, a case that also involved reviews of applications for leave brought by a vexatious litigant:

[38] As can be seen, [s. 29] provides that a person against whom a vexatious-litigant order is made must be given the right to apply to a judge in chambers for leave to initiate further proceedings. However, it does not prevent repetitive applications for leave. In addition, a refusal of leave can be reviewed by a division of the Court under s. 9(6) of the Court of Appeal Act, which provides:

The court may discharge or vary any order made by a justice other than an order granting leave to appeal under section 7.

[39] The combined effect of ss. 9(6) and 29 is that there is no limit on the number of leave applications and reviews that can be brought by a person who has been found to be a vexatious litigant in this Court. When a leave application or a review application is filed, the registry will arrange for it to be spoken to in court, even though the application is devoid of merit and/or has been previously refused. Mr. Houweling's persistence evinces that, in some cases, a vexatious-litigant order is not sufficient to shield either other parties or the Court itself from such conduct.

[40] What, then, can a court do to bring to an end the misuse of the litigation process caused by the repetitive filing of unmeritorious applications that result in the needless expenditure of judicial resources and, in some cases, unnecessary expense to other parties? The answer lies in the ancillary (inherent) jurisdiction that every court has to prevent its process from being abused. As Madam Justice Arbour stated in *United States of America v. Shulman*, 2001 SCC 21, [2001] 1 S.C.R. 616, an appellate court "like all courts, [has] an implied, if not inherent, jurisdiction to control its own process, including through the application of the common law doctrine of abuse of process": para. 33. See also: *United States of America v. Cobb*, 2001 SCC 19, [2001] S.C.R. 587 at para. 37.

[Emphasis added.]

[47] In Houweling, after the appellant was declared a vexatious litigant, he filed a notice of motion seeking to challenge it, an application for leave to the Supreme Court of Canada, a new notice of appeal and application for leave in this Court, an application to review the denial of leave, another application seeking production of a transcript and alleging fraud and conspiracy against third parties, an application for monetary judgment, and another application to review the denial of his various applications. None of these applications was meritorious, and this summary does not include the various applications brought at the Supreme Court.

[48] We find that this case is an appropriate one to exercise the Court's ancillary or inherent jurisdiction to control its own processes. Like Mr. Houweling, A.N.H. has filed numerous meritless applications in both this Court and the court below, both before and after being declared a vexatious litigant. He has brought applications in the Federal Court of Canada and sought leave to appeal this Court's decision to the Supreme Court of Canada. In this Court alone, since being declared a vexatious litigant, he has filed over a half dozen notices of motion seeking leave to appeal, varying denials of leave to appeal, or for other relief--and

that was all prior to the applications before the chambers judges that were reviewed above. Evidently, he has not been deterred by the vexatious litigant orders or their expanding breadth or the costs ordered against him. Indeed, A.N.H. was recently found to be in contempt of an order that he pay the costs of a report on the views of the children: 2022 BCSC 470.

- [49] Not only has A.N.H. persisted in wasting judicial resources and abusing court processes despite multiple warnings, he has done so against his former spouse and their children. As Justice Cole found in 2014, A.N.H.'s conduct in this litigation (which had already been ongoing for years) constituted intimidation, harassment, and family violence. We observe that all this litigation began in 2009 when A.N.H. filed an application without notice to L.D.G. after he dropped her off at the airport so she had no chance to respond, followed by another application--again without notice--without ever having served L.D.G. the materials on which he relied. It has been eight years, dozens of court applications, and thousands of pages of largely incomprehensible material, since Justice Cole's finding that this is family violence. We do not find that anything has changed. "Family violence", as defined in the Family Law Act, S.B.C. 2011 c. 25 includes "psychological or emotional abuse of a family member" such as intimidation or harassment. It is not in the interests of justice for this Court to allow its processes to be used as a vehicle for perpetrating family violence of this nature.
- [50] A.N.H. has been enjoined from instituting any legal proceedings in the Supreme Court, without first obtaining leave: 2019 BCSC 1106. He was further enjoined from filing or attempting to file any document in this Court, including applications for leave to bring or commence proceedings: 2021 BCCA 325. To this, we consider it necessary to add that A.N.H., on his own behalf or as litigation guardian for his children, is enjoined from seeking to vary or discharge an order of a justice pursuant to s. 9(6) in respect of any matter, including decisions respecting leave to appeal, any matter involving L.D.G., L.D.G.'s family, their children, or members of the judiciary. As such, A.N.H. or anyone acting on his behalf shall not file or attempt to file, by any means whatsoever, any document in the Court of Appeal for British Columbia. For greater clarity, this prohibition is not limited to any specific files, matters, or parties. This prohibition does not apply if A.N.H., on application and to the satisfaction of the registrar or a justice of this Court, has paid all outstanding court costs awarded against him and all child and spousal support arrears and is represented by a member in good standing of the Law Society of British Columbia. Nor does it apply if he is the respondent in an application.
- [51] Adapting the words of Justice Southin in *Interclaim Holdings Ltd. v. Down*, 2002 BCCA 632 at para. 27, A.N.H. "has taken unto himself, from the pool of judicial resources available in this province, more than can be said to be his fair share".

Service on L.D.G.

- [52] It is convenient at this point to address the question of whether A.N.H. can serve L.D.G. via "e-courier". L.D.G. submitted that she is sent thousands of pages via e-courier, and must download the material before it expires, which takes a great deal of time. More crucially, the e-courier service allows A.N.H. to monitor whether L.D.G. has received, viewed, opened, and downloaded the documents, and he emails her as soon as he is alerted to her receipt of the documents. In our view, this form of service is a continuation of the harassment of L.D.G., indicative of A.N.H.'s continued attempts to control and surveil L.D.G. and constitutes emotional abuse and family violence. A.N.H. may not serve L.D.G. with e-courier, email, or any other form of electronic or digital method, with any documents. In other words, any service will be using paper documents and in accordance with the Rules.
- [53] This brings me to the final issue: A.N.H.'s use of his children's names in the style of cause and his purported role as litigation guardian.

Should the style of cause be amended to remove the children's names?

- [54] L.D.G. asks that this Court amend the style of cause to remove the children's names. She highlights their privacy interests and the fact that these proceedings were not properly brought by A.N.H. as litigation guardian for the children. Indeed, A.N.H. has previously conceded that he had no authority to bring these many actions on the children's behalf: 2017 BCCA 216 at paras. 11-12. Justice Abrioux provided cogent reasons for striking A.N.H.'s pleadings rather than replacing him with a neutral litigation guardian: 2016 BCSC 1559 at paras. 40-63.
- [55] L.D.G. asks that all of the litigation be initialized because A.N.H.'s surname is not a common name, and her children are suffering as a result of the ongoing litigation. A.N.H. does not oppose complete initialization.
- [56] Accordingly, the question then is whether the style of cause here should be amended to substitute A.N.H. as a party in his own right, rather than as a litigation guardian for his children. In our view, this would be appropriate.
- [57] Despite having no interest in the litigation, the children's names have consistently been used by A.N.H., with no regard to their privacy interests. The evidence before us included a video, non-consensually recorded by A.N.H., of the parties' son visibly upset at the fact that his friends know about the ongoing litigation between his parents due to extensive media reports. As noted above, A.N.H. can bring no further litigation, including in the names of his children. In *Cambridge Mortgage Investment Corporation v. Matich*, 2014 BCCA 377, this Court removed the name of a vexatious litigant who had no standing as a proper appellant or respondent from the appeal record. Accordingly, the Court held that the "appeals should be tidied, thereby to make clear, on the face of the appeal record, the identities of the parties and thus the names of those who may file documents in respect to the appeal": para. 27. The same reasoning applies here.

[58] In our view, A.N.H. should not be permitted to hide behind his children while he brings frivolous and abusive claims. We recall Justice Cole's findings in 2014 that A.N.H.'s conduct in this litigation amounted to family violence against L.D.G. and that this has indirectly affected the children. In our view, bringing meritless claims in the names of the children against their mother, all while knowing that this is improper, goes beyond merely an indirect effect. We observe that, over the past several months, the parties' and the children's names have retroactively been replaced with initials in the proceedings below, although there does not seem to be a formal order to that effect. As such, we direct that the style of cause in these proceedings be amended to remove the names of the children, and be replaced with the initials of A.N.H.

Disposition

[59] Accordingly, and for the reasons provided, we make the following orders:

- a) A.N.H.'s applications to vary or discharge the orders of Justices DeWitt-Van Oosten, Stromberg-Stein, and MacKenzie, pronounced on September 2, 2021, October 6, 2021, and November 16, 2021 respectively, are dismissed;
- b) A.N.H., and anyone acting on his behalf, shall not file or attempt to file, by any means whatsoever, any document in any new or existing file in any registry of the Court of Appeal for British Columbia. For greater clarity, this prohibition includes but is not limited to applications for leave to bring or commence proceedings and applications to vary or discharge an order of a justice pursuant to s. 9(6) of the Act, including decisions respecting leave. This prohibition includes but is not limited to files CA43916, CA43917, CA43942, and CA43943, and any other matter that is subject to the May 2017 and September 2021 vexatious litigant orders. Among other matters, this prohibition applies to any proceedings involving L.D.G., L.D.G.'s family, the parties' children, and members of the judiciary;
- c) The prohibition in (b) does not apply if all of the following conditions are met:
 - i. A.N.H. is represented by a member in good standing of the Law Society of British Columbia, and that member signs any document filed in this Court;
 - ii. A.N.H. has first established, on application and to the satisfaction of the registrar or a justice of the Court of Appeal, that he has paid all outstanding costs awarded against him in this Court and the British Columbia Supreme Court; and
 - iii. A.N.H. has first established, on application and to the satisfaction of the registrar or a justice of the Court of Appeal, that he has paid all outstanding child and spousal support arrears.
- d) The prohibition in (b) does not apply if A.N.H. is the respondent in an application and he is represented by a member in good standing of the Law Society of British Columbia;
- e) Any document filed under (d) must be signed by a member in good standing of the Law Society of British Columbia and must be within the usual page limits;

- f) The Court of Appeal registry staff are authorized to discard any document that is submitted for filing in contravention of this order;
- g) A.N.H. shall not serve L.D.G. with any material via e-courier, email or any other electronic or digital method; and
- h) the style of cause in these proceedings be amended to remove the names of the children, and be replaced with the initials of A.N.H.
- [60] For greater clarity, the vexatious litigant orders made by Justice Newbury in May 2017 and by Justice DeWitt-Van Oosten in September 2021 remain in effect, but this order is intended to include the terms of their orders.
- [61] Finally, L.D.G. has requested that costs be fixed by the Court to avoid delays and further litigiousness in settling the bill of costs. It is appropriate to fix costs of the applications.
- [62] A.N.H. will pay L.D.G.'s costs for these applications in the sum of \$2,700.00, based on 10 units for each application, at \$60 per unit on scale 1, and disbursements of \$300.00, payable forthwith. There will be no assessment by the Registrar.
- [63] We would direct the Registrar to prepare a formal order to give effect to these reasons. It will not be necessary to obtain A.N.H.'s approval as to the form of that order. This order is to be brought to the attention of the Court's registry staff.

"The Honourable Madam Justice Bennett"

"The Honourable Madam Justice Fisher"

"The Honourable Mr. Justice Marchand"

Source & reproduction note

Judgment wording, source notices and original paragraph numbers are retained. Esheria supplies the layout and this PDF's page numbers; these are not the source pagination. This is a research copy, not an official or certified court document. Check quotations, citations and publication restrictions against the original source before relying on it.

ORIGINAL SOURCE <https://www.bccourts.ca/jdb-txt/ca/22/01/2022BCCA0155.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/a-n-h-v-l-d-g-2022>

Prepared on 27 October 2026 · Esheria