
CANADA / JUDGMENT

Hokhold v. Gerbrandt

2017 BCSC 1249

COURT

Supreme Court of British Columbia

DECIDED

19 July 2017

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

2017 BCSC 1249 Hokhold v. Gerbrandt

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Hokhold v. Gerbrandt,

2017 BCSC 1249

Date: 20170719

Docket: E45924

Registry: Vernon

Between:

Andrew Nicholas Hokhold

Claimant

And

Laurie Darlene Gerbrandt

Respondent

Before: The Honourable Mr. Justice Abrioux

Reasons for Judgment

Counsel for Claimant/Application Respondent:

A. Hokhold

B. Kirkpatrick

Counsel for Respondent/Applicant:

L. Kahn, Q.C.

Place and Date of Hearing:

Vernon, B.C.

May 29-31 and June 22, 2017

Place and Date of Judgment:

Vernon, B.C.

July 19, 2017

Table of Contents

I: INTRODUCTION. 3

II: BACKGROUND. 4

III: THE LEGAL FRAMEWORK. 8

IV: DECISION. 10

V: CONCLUSION. 19

I: INTRODUCTION

[1] In this high conflict family law proceeding the respondent/applicant (Ms. Gerbrandt) seeks the following relief:

- (a) a declaration that the claimant (Dr. Hokhold) is a vexatious litigant;
 - (b) an order that legal proceedings must not, without leave of the court, be instituted by Dr. Hokhold against Ms. Gerbrandt or any members of her family, pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443; and
 - (c) special costs.
- [2] Ms. Gerbrandt's notice of application to have Dr. Hokhold declared a vexatious litigant, and to which I shall refer as the "SC-VLA" (the Supreme Court vexatious litigant application), was filed on July 20, 2016 and amended October 21, 2016. I was assigned by the Chief Justice to hear the SC-VLA, which was originally scheduled to be heard on November 7, 2016. It was then adjourned at Dr. Hokhold's request due to certain medical issues including stress and "burn out". It was ultimately set for hearing for three days, being May 29-31, 2017.
- [3] Dr. Hokhold applied to adjourn the May 2017 hearing dates. I dismissed that application in reasons for judgment indexed at 2017 BCSC 952.

- [4] Ms. Gerbrandt had also brought a similar application in the Court of Appeal (the "CA-VLA") which had been scheduled to be heard on December 12, 2016. The CA-VLA was adjourned when Dr. Hokhold did not appear in the Court of Appeal as a result of his admission to the Vernon General Hospital the day before due to medical problems including stress.
- [5] The CA-VLA proceeded before Justice Newbury on May 1, 2017 with judgment being reserved. When the SC-VLA commenced on May 29-31, 2017, judgment had not been rendered in the CA-VLA.
- [6] Dr. Hokhold represented himself when the SC-VLA proceeded on May 29, 2017. At that time, ex mero motu, I considered whether I should recuse myself from hearing the SC-VLA. In an oral ruling that day, which is now indexed at 2017 BCSC 1246, I declined to do so.
- [7] The SC-VLA then proceeded with Dr. Hokhold representing himself, as had been the case to that point in time with the exception of one appearance by counsel in November 2016.
- [8] On May, 30 2017 Dr. Hokhold commenced making submissions on his own behalf. On May 31, 2017 he sought an adjournment of the SC-VLA so that he could have counsel represent him for the remainder of the application. I granted that application on certain terms and the SC-VLA was adjourned to June 22, 2017. That day the application was completed. Dr. Hokhold was represented by counsel, who previously acted as his trial counsel in 2012 and 2014 and who has appeared on his behalf from time to time since 2014 including before me in November 2016.
- [9] On June 9, 2017, that is, two weeks before the continuation of the SC-VLA and in reasons for judgment indexed at 2017 BCCA 216, Justice Newbury declared Dr. Hokhold to be a vexatious litigant in that court (the "CA-VLA Reasons").
- [10] For the reasons that follow the SC-VLA is also granted.

II: BACKGROUND

- [11] The CA-VLA Reasons succinctly summarize part of the essentials of this long standing family law proceeding:
- [5] Dr. Hokhold and Ms. Gerbrandt have been parties to "high conflict" family litigation since 2009. They lived in a common-law relationship between 2005 and early 2010 and have two children, ages six and nine. After a trial in the summer of 2012, Mr. Justice Cole in the Supreme Court dealt with most issues of support and custody of the children and in particular, granted sole custody of the children to Ms. Gerbrandt, joint guardianship to both parents, and dismissed Ms. Gerbrandt's application to relocate with the children to Swift Current, Saskatchewan. Cole J. attributed an annual income of \$610,000 per year to Dr. Hokhold, who is a dentist, and on this basis, ordered child support of \$7,900 per month and spousal support of \$9,000 per month.

- [6] Two years later, Ms. Gerbrandt was permitted to relocate, again by order of Cole J. The Court was satisfied that the move would enhance the children's quality of life and increase Ms. Gerbrandt's emotional well-being and financial opportunities: see 2014 BCSC 1875 at para. 138. The Court's order provided that the primary residence of the children would be with their mother, that she would be entitled to make all significant decisions relating to them, and that a child psychologist was to be engaged for the children until further order. Cole J. seized himself of any further applications.
- [7] Dr. Hokhold has failed to pay the support ordered by Cole J. and vehemently denies that the income attributed to him is realistic. He says he is not capable of working the four days per week assumed by Cole J. - as opposed to the ten to 11 hours three days per week he was found to be working. By order dated May 15, 2014, Cole J. found Dr. Hokhold to be in contempt for his failure to pay support: see 2014 BCSC 1784 at para. 17.
- [8] Dr. Hokhold made a few support payments up to August 2014. FMEP became involved and was able to seize some of Dr. Hokhold's funds over 2013 and 2014. Cole J. ordered that he pay \$25,000 per month commencing December 2014 until a trial was scheduled to vary the earlier support order: see 2014 BCSC 1875 at paras. 21-3.
- [9] Dr. Hokhold's next step was to appeal the contempt order made in 2014. He was successful in having it set aside: see 2016 BCCA 6. Madam Justice Saunders, speaking for the Court, however, told Dr. Hokhold that he "must comply with the order as varied from time to time, or he will face sanction from the court." (At para. 36.) Ms. Aucoin deposes that as of April 3, 2017, over \$448,000 was owing for child and spousal support, together with various costs orders that Dr. Hokhold had failed to pay.
- [10] In June 2015, Dr. Hokhold brought on an appeal of the order dealing with the primary residence of the children. This court declined to hear that appeal in the absence of any "convincing explanation" as to why he remained in arrears with respect to support: see 2015 BCCA 268. We noted that in his argument, Dr. Hokhold had "said little or nothing about the interests of his children in arguing that the appeal should proceed." Dr. Hokhold then filed voluminous materials containing new evidence and lengthy arguments that were, we commented, "largely irrelevant to the question of whether the appeal should be reopened." We also observed:

On March 21, 2016, the Registrar wrote to Dr. Hokhold and Mr. Kahn directing that any further submissions should be of a summary nature and that although they were permitted to refer to evidence, evidence and affidavits should not be filed unless the Court agreed to reopen the appeal. Undeterred, Dr. Hokhold then filed 58 additional pages of submissions including further evidence and arguments. Mr. Kahn again objected, observing that the submissions represented Dr. Hokhold's view of the evidence and had nothing to do with the underlying reasons for judgment of this court dated June 11, 2015 dismissing the mobility appeal. He added that without incurring substantial legal fees, he was unable to rebut the new submissions of Dr. Hokhold.

We view this situation as very unfortunate. From the material, it appears that Dr. Hokhold is still in arrears (as to a very substantial amount) with respect to spousal support and the payment of certain expenses; yet, having discontinued his appeal of the support order, has not sought any variation of that order in the Supreme Court. This fact (which Dr. Hokhold has not attempted to explain), together with his continued 'stonewalling' of the Court by filing obviously irrelevant material and flouting of the Registrar's directions, lead us to the conclusion that we should not exercise our discretion in favour of reopening the appeal. [At paras. 4-5.]

The application was dismissed: 2016 BCCA 159.

- [11] As noted at para. 3 of our reasons, Dr. Hokhold had abandoned an appeal from the support orders. Presumably, this made it more important than ever for him to pursue a variation of the support order in Supreme Court - yet this has not happened. Instead, he has turned his attention to various other alleged wrongs on the part of Ms. Gerbrandt, including defamation and an alleged conspiracy with the Canada Revenue Agency. He also commenced two civil actions against her and her mother in which he purported to be acting as the litigation guardian of both of his children. In these actions, he claimed the defendants had acted in breach of trust in connection with certain gold coins held for the children. These actions became the focus of multiple applications, adjournments, filings and hearings. At one point (on August 15, 2016), Dr. Hokhold conceded that the proceedings had been improperly commenced and that he had had no authority to bring them on his children's behalf.
- [12] The defendants in the gold coin actions sought to have them struck. In the course of a hearing, Dr. Hokhold suggested that the Public Trustee might be willing to act as the children's litigation guardian - failing to disclose to the Court that the Public Trustee had already written to him declining to do so.
- [13] For reasons indexed as 2016 BCSC 1559, Abrioux J. struck the two actions and awarded special costs to Ms. Gerbrandt. The judge urged Dr. Hokhold to consider the claims "from his children's perspective" and to "recognize that it was in their best interests that their mother and grandmother not be sued by them without an independent assessment as to the merits of the claims." Dr. Hokhold's response was to seek the recusal of Mr. Justice Abrioux - a motion that has now been withdrawn.
- [14] Dr. Hokhold applied in this court for leave to appeal the two orders of Abrioux J. made on August 8, 2016 in the two gold coin actions, and sought an order setting aside the Supreme Court's order declining to adjourn. He sought a new hearing and special costs. The following week, he also filed notices of appeal in respect of Abrioux J.'s orders made August 18 striking the civil actions, thus bringing to four the number of appeals filed in the gold coin actions.
- [15] Mr. Kahn scheduled his client's application under s. 29 of the Court of Appeal Act to be heard in November, but it was adjourned to December 12. On December 8, Dr. Hokhold applied for an adjournment and filed seven binders of material, provided to Mr. Kahn on December 8 at 4:30 p.m. The application was set to be heard the next day but was not. At 9:06 a.m. on

December 12, Ms. Gerbrandt received an email from Dr. Hokhold purporting to serve her with thousands more pages of materials. Meanwhile, in chambers, Mr. Kirkpatrick appeared by telephone as a friend of the Court and told me as chambers judge that Dr. Hokhold had been hospitalized in Vernon and could not appear. I adjourned the vexatious litigant application. Mr. Kahn has since obtained records from the hospital that indicate that Dr. Hokhold left the hospital at 11:10 that morning, "driving self" after having been discharged without any prescriptions or medications. The hearing was re-scheduled for May 1, 2017.

- [16] On that date, Dr. Hokhold did not address directly his record of misconceived applications and appeals, repeated adjournments, and voluminous and irrelevant filings in both courts. On this occasion, he was preoccupied with his belief that Mr. Justice Cole has committed "fraud" in his dealings with Dr. Hokhold. Mr. Justice Cole is said to have "blocked" several of his applications and "targeted" him, but more importantly, is said to have "fabricated" oral "declarations" made by Dr. Hokhold's previous lawyer and another so-called "phantom lawyer" in some manner that I must admit is not clear to me. Dr. Hokhold says he has launched complaints about the conduct of Cole J. to the Canadian Judicial Council and to the R.C.M.P., and said he was sure Cole J. would be "indicted". Dr. Hokhold seemed to suggest as well that Ms. Gerbrandt had "participated" in the "fabrications".
- [17] As I told Dr. Hokhold, until any "fraud" is proven on the part of a judge of the Supreme Court, I assume that the judge is speaking honestly and is not a fraudster. I also advised Dr. Hokhold that if an order were to be made under s. 29, and it later turned out that Dr. Hokhold's allegations against Cole J. were correct, it is very likely he would obtain the permission of this court to reopen or appeal any orders of the lower court that were affected by such "fraud".
- [18] In his reply submissions, Mr. Kahn on behalf of Ms. Gerbrandt admitted that Ms. Gerbrandt has not always been the model of patience and has sometimes reacted strongly to Dr. Hokhold's conduct. Mr. Kahn also noted that because Cole J. is a supernumerary judge, his seizing himself of the family litigation has created problems in terms of scheduling applications. Overall, however, Mr. Kahn emphasized the extreme demands put on his client in terms of responding and attending to the constant stream of (misconceived) applications, the legal fees associated therewith, and the stress of attacks on her status as the primary caregiver to her children, not to mention financial pressure due to Dr. Hokhold's continued failure to pay his support obligations. I accept that Ms. Gerbrandt's feeling of stress is certainly justified by Dr. Hokhold's conduct, and I expect that the children also feel strain as well.
- [12] To this summary I would add the various actions which Dr. Hokhold has taken in this court including those to which I referred in the Gold Coins Reasons being 2016 BCSC 1559 and the Adjournment Reasons being 2017 BCSC 952 .
- [13] I refer to Dr. Hokhold's allegations of fraud in this court in the Adjournment Reasons (2017 BCSC 952) at paragraphs 15 and 33.

- [14] At last count, Dr. Hokhold has filed 98 affidavits in this court, some exceeding 2,500 pages (including exhibits).
- [15] He has also, on several occasions, filed requests to appear or reappear either before Justice Cole or myself. These pertain to such matters as documentary disclosure and reconsideration of prior decisions made. A request to reappear before Justice Cole submitted in July 2016, for example, sought 64 orders.
- [16] It is beyond the ambit of these reasons to outline any further the numerous applications, requests to appear, affidavits etc. that have been filed or sought by Dr. Hokhold. They are all a matter of record.
- [17] Outside the ambit of the family law proceeding, Dr. Hokhold has also commenced the Gold Coins proceedings and brought an action against Ms. Gerbrandt for damages arising from alleged defamatory conduct. He has also sued counsel who acted for the province's Family Maintenance Enforcement Program in its attempts to enforce Dr. Hokhold's support obligations arising from the 2012 proceedings.

III: THE LEGAL FRAMEWORK

- [18] Section 18 of the Supreme Court Act, RSBC 1996 c. 443 provides:

18 If, on application by any person, the court is satisfied that a person has habitually, persistently and without reasonable grounds, instituted vexatious legal proceedings in the Supreme Court or in the Provincial Court against the same or different persons, the court may, after hearing that person or giving him or her an opportunity to be heard, order that a legal proceeding must not, without leave of the court, be instituted by that person in any court.

- [19] In considering whether a litigant is vexatious or an appeal is vexatious, the court will look to the whole history of the matter, with the ultimate question being, as stated by Justice Donald in *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594 [Lindsay] at paragraph 26, whether "the litigant has taken himself over the line".
- [20] In *Carten v. Carten*, 2015 BCCA 201, Justice Bennett referred to Lindsay in enumerating certain of the key principles which can be considered on an application for a vexatious litigant order:
- [32] In *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594, Donald J.A. cited at para. 25 the following non-exhaustive list of principles that may be considered on an application for a vexatious litigant order:
- (a) the bringing of one or more actions to determine an issue which has already been determined by a court of competent jurisdiction constitutes a vexatious proceeding;
 - (b) where it is obvious that an action cannot succeed, or if the action would lead to no possible good, or if no reasonable person can reasonably expect to obtain relief, the action is vexatious;

- (c) vexatious actions include those brought for an improper purpose, including the harassment and oppression of other parties by multifarious proceedings brought for purposes other than the assertion of legitimate rights;
- (d) it is a general characteristic of vexatious proceedings that grounds and issues raised tend to be rolled forward into subsequent actions and repeated and supplemented, often with actions brought against the lawyers who have acted for or against the litigant in earlier proceedings;
- (e) in determining whether proceedings are vexatious, the court must look at the whole history of the matter and not just whether there was originally a good cause of action;
- (f) the failure of the person instituting the proceedings to pay the costs of unsuccessful proceedings is one factor to be considered in determining whether proceedings are vexatious.
- (g) the respondent's conduct in persistently taking unsuccessful appeals from judicial decisions can be considered vexatious conduct of legal proceedings.

See also *Dawson v. Dawson*, 2014 BCSC 44 at paras. 15ff. [Dawson]

[21] In the CA-VLA reasons, Justice Newbury noted:

[21] An order under s. 29 of the Court of Appeal Act is obviously not one that should be made lightly. Such an order is an "extraordinary remedy that alters a person's right to access the courts": *Kallaba v. Bylykbashi* (2006) 207 O.A.C. 60, lve. to app. dismiss'd [2006] S.C.C.A. No. 144, at para. 31. In *Nayyar v. Manufacturers Life Insurance Company* 2016 BCSC 1587, Mr. Justice Voith observed that:

An order declaring that an individual is a vexatious litigant is a serious matter. It is not an order that is lightly made. At the same time, that order is, in certain circumstances, in the public interest and necessary to prevent ongoing abuse of the court's process. [At para. 78.]

IV: DECISION

[22] When I apply the principles to which I have referred to the circumstances of this case it is clear to me that the application should be granted.

[23] In the CA-VLA Justice Newbury stated at paragraph 4:

The law is also clear that the conduct of a litigant in the court below may inform this court's decision under s. 29: *Extra Gift* at para. 36; *Dawson* at para. 26. I understand that an application to have Dr. Hokhold declared a vexatious litigant in the Supreme Court of British Columbia is pending and I make no comment on that application. However, the applications in both courts involve the family and family-related litigation between the parties and it would be difficult to separate Dr. Hokhold's conduct in this court from his conduct in the Supreme Court.

[Emphasis added.]

[24] Justice Newbury went on to state:

- [22] While in this case the majority of vexatious conduct on Dr. Hokhold'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 Ms. Gerbrandt and the children; and the fact that Dr. Hokhold 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 Ms. Gerbrandt cannot.
- [23] It is these factors, together with his filings in this court, that lead me to conclude that Dr. Hokhold 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 Dr. Hokhold admits that he is "tired" as a result of the litigation, and there are more than a few judges who feel the same.
- [25] It is evident from the evidentiary record and prior decisions of this court that both parties love their children.
- [26] When I review the history of the litigation between the parties I conclude that the 2014 decision allowing Ms. Gerbrandt to relocate to Saskatchewan with the children was the genesis for Dr. Hokhold's subsequent vexatious conduct.
- [27] Until that time, his conduct in the family proceedings, while high conflict on both sides, was "orthodox" to the extent that term can ever be used in such litigation. Both parties prosecuted and defended their interests in an aggressive yet largely mutual manner. In fact, in the time frame following the trial in 2012 until the summary trial in 2014 there were very few appearances before the court.
- [28] It bears remembering that in the 2012 trial judgment, while unsuccessful in persuading the trial judge that his income for support purposes was significantly lower than that claimed by Ms. Gerbrandt, Dr. Hokhold was successful in preventing the proposed relocation to Saskatchewan.
- [29] It was only following the 2014 summary trial that Ms. Gerbrandt was able to move with the children to Saskatchewan.
- [30] I accept Ms. Gerbrandt's submission that the record establishes that since November 2014, when the relocation reasons were rendered by the trial judge, Dr. Hokhold has essentially developed a "scorched earth" approach to the litigation.

- [31] And it is clear to me that no one, not the parties, the children, relatives, opposing counsel, nor this court, including the trial judge, has escaped being embroiled in this largely one sided barrage.
- [32] The impact of Dr. Hokhold's conduct on the children has been commented on by Francis Stewart, a child psychologist, who had seen them since November 2014. In his report of October 10, 2016 he states at pages 45 and 46:
- (a) The high conflict dispute between Andrew Hokhold and Laurie Gerbrandt has been ongoing for almost seven years' post-divorce.
 - (b) ...[M]uch of the dispute has been fueled (sic) by the numerous Court Applications and Appeals filed by Andrew Hokhold.
 - (c) The most important reason for working out their contentious relationship is that their high level of conflict has far-reaching negative effects on their children.
 - (d) If the above task proves to be too formidable for the parents, I recommend that the Court give consideration to Laurie Gerbrandt having sole decision-making capacity for all matters that affect the direct care and upbringing of W. and E. .
 - (e) As a means of further reducing conflict between the parents, the Court prohibit any Court Applications that are seen as vexatious, frivolous, or irrelevant.
- [33] For her part, Ms. Gerbrandt has deposed to the significant negative impact which Dr. Hokhold's conduct has had on her life. Her counsel does concede that Ms. Gerbrandt's conduct has not always been free from criticism, a fact that was referred to in the CA-VLA reasons at para. 18, which is cited at paragraph 11 above.
- [34] Not surprisingly Dr. Hokhold's conduct in the litigation has also had a negative effect on his own health, with his family physician Dr. Pritchard diagnosing him with severe anxiety and severe depression in the fall of 2016. This has also been commented on by Dr. Carey, a psychiatrist, in his report of December 12, 2016.
- [35] Dr. Hokhold has also advised me on more than one occasion of his being under significant stress and being "burned out" by the litigation.
- [36] On August 8, 2016, in unreported oral reasons for judgment dismissing Dr. Hokhold's application to adjourn the Gold Coins applications, I referred to his conduct in the family proceedings over the years. In that decision I referred to what was stated by the Court of Appeal in 2016 BCCA 159, including that:
- Dr. Hokhold had " filed voluminous materials containing new evidence and lengthy arguments that were largely irrelevant to the question of whether the appeal should be reopened";
 - counsel for Ms. Gerbrandt submitted that he had " 'egregiously breached' the concept of proportionality, with the result that he was causing extreme financial hardship to Ms. Gerbrandt";

· the situation was "very unfortunate, and that Dr. Hokhold remained in substantial arrears" of his support obligations but had abandoned his appeal of the Supreme Court support order and had not sought variation of the support order; and

· Dr. Hokhold's actions had "the effect of 'stonewalling' the Court by filing obviously irrelevant materials and flouting the Registrar's directions."

[37] In the unreported oral reasons of August 8, 2016, I further stated that:

[9] If, as he submits, Dr. Hokhold is overwhelmed by the litigation at the present time, he has, in my view, only himself to blame. The desire to attempt to prolong the hearing of these applications, which on their face may well have been improperly commenced, appears to me to be further evidence of the conduct referred to by Justice Newbury. Dr. Hokhold acknowledges that the proceedings were likely improperly commenced. In fact, he says that to dismiss these proceedings will only result in actions being refiled, albeit properly, and that he cannot afford the additional \$400 this will cost him. In my view, Dr. Hokhold should have considered the manner in which he chose to proceed prior to filing the notices of civil claim in June 2016 in the first place.

[38] Dr. Hokhold's counsel submits that the CA-VLA reasons should play little if any role in my decision on this application in that his client "should not be convicted twice for the same offence". I disagree.

[39] It is clear from the CA-VLA reasons for judgment that the vexatious litigant applications should be considered independently both in this court and the Court of Appeal. But that is not to say that in my consideration of whether the application should be granted in this Court I cannot consider, as a factor in the exercise of my discretion, Dr. Hokhold's conduct in other courts, in particular the Court of Appeal.

[40] If, as Justice Newbury states, "the law is also clear that the conduct of a litigant in the court below may inform this court's decision", then the converse must also be the case - that is, my decision can be informed by conduct in the court above.

[41] That is particularly so when, as was the case in the VA-CLA:

the applications in both courts involve the family and family-related litigation between the parties and it would be difficult to separate Dr. Hokhold's conduct in this court from his conduct in the Supreme Court.

[42] Contrary to what is submitted by Dr. Hokhold, this is not "convicting him twice for the same offence". Rather, this is considering similar, and in some instances identical, conduct in this court and deciding whether it is also vexatious here.

[43] In doing so I conclude that most, if not all, of the factors identified in the CA-VLA reasons and as set out in Carten and Dawson exist in relation to Dr. Hokhold's conduct in this court. If anything it appears to be more egregious here if for no other reason than:

- the length of time the conduct has persisted;
- the number of applications and requests to appear or reappear filed;
- Dr. Hokhold habitually seeking adjournments and filing vast amounts of materials at the last moment;
- the commencement of the Gold Coins actions and continuing their prosecution notwithstanding an acknowledgment that there was no legal basis to do so and being less than candid with the court in the process;
- Dr. Hokhold's acknowledgment that much of his conduct is motivated by attempting to prove that his allegations of fraud against Ms. Gerbrandt and the trial judge have merit; and
- the additional hundreds, and at times thousands, of pages of materials filed in relation to various applications before the court.

[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, Dr. Hokhold has filed thousands of pages of materials. In support of his application to adjourn the SC-VLA and seek production of documents, Dr. Hokhold 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] Ms. Gerbrandt's application record in support of the SC-VLA contained 7 tabs in what I would describe as an average size black binder. Dr. Hokhold'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, Dr. Hokhold 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 Dr. Hokhold 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 Dr. Hokhold 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.

- [48] Dr. Hokhold submits that his conduct should be considered dating back to 2010 and that within this context it cannot be said that it is habitual and persistent. I have considered the entire time frame from 2010 to the present in reaching my decision, and note it was only after the 2014 relocation reasons were rendered in November 2014 that Dr. Hokhold's conduct changed dramatically. However, I find that his conduct since November 2014 has established a pattern of conduct that is habitual and persistent.
- [49] Dr. Hokhold also submits that any negative effects of his conduct can be appropriately dealt with through proactive and effective case management. While this may be superficially attractive, I have decided that in these circumstances, case management alone will be insufficient moving forward.
- [50] For the reasons I have outlined I have concluded that Dr. Hokhold 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.
- [51] In addition, his conduct, particularly since November 2014, has been habitual and persistent and the "drastic measure" sought by the applicant should be granted. The issue then becomes whether I should grant the order in the form sought in the amended notice of application being:
- a. A declaration that Hokhold, Andrew Nicholas Hokhold ("Hokhold"), is a vexatious litigant.
 - b. An order that legal proceedings must not, without leave of the court, be instituted by Hokhold, Andrew Nicholas Hokhold against the Respondent, Laurie Darlene Gerbrandt ("Gerbrandt"), or any members of her family, pursuant to s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443.
- [52] First of all, there will be a declaration that Dr. Hokhold is a vexatious litigant.
- [53] As Justice Newbury noted in the CA-VLA reasons:
- [23] It is these factors, together with his filings in this court, that lead me to conclude that Dr. Hokhold 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.
- [54] I agree that these are the real issues in the ongoing family proceedings. The question then becomes how Dr. Hokhold should be permitted to advance his claims regarding these issues.
- [55] One alternative is to grant the relief in the manner sought by Ms. Gerbrandt, which is what has recently occurred in the Court of Appeal.
- [56] The other is, having declared Dr. Hokhold to be a vexatious litigant, to grant leave at this stage for him to bring applications to vary the 2012 and 2014 orders, with those applications to be restricted to demonstrating a material change of circumstances since the orders were made.

[57] There is a dearth of authority on what is required of a person who has been declared a vexatious litigant who then seeks leave to bring proceedings.

[58] *Nelson v. Canada (Customs and Revenue Agency)*, 2005 BCSC 1843, involved an application by the petitioner which arose as a result of an order, made by Chief Justice McEachern, declaring Mr. Nelson to be a vexatious litigant and ordering that no proceedings may be brought by him in any court without leave of the court.

[59] In his reasons, Chief Justice McEachern set out the criteria that a court would observe in assessing whether that leave be given by saying:

...if you bring a reasonably founded or arguable case, I have no doubt that any judge of this court will give you leave...

[60] This order was upheld on appeal.

[61] Mr. Nelson's application for leave consisted of a draft statement of claim and a binder entitled "Evidence of Arguable Case and Reasonable Founded Claim". Justice Brooke in dismissing the application for leave stated:

[9] A vexatious litigant or a person so found under now s. 18 of the Supreme Court Act, is not denied access to the courts, but a vexatious litigant so found is required to obtain the leave of the court to bring proceedings. The basis for leave is the applicant's demonstration of a reasonably founded or arguable case. The test is quite a different test than that of whether a statement of claim or other pleading should be struck. In such case, the court begins with the assumption that the assertions of fact are true. Here, where an order has been made requiring Mr. Nelson to show a reasonably founded or arguable case, there is a burden upon him, it seems to me, to bring forward not only a claim that is known to the law but also the manner in which that claim can be proven. It is not a requirement that he prove the case, that would be too high a burden, but it is necessary that he show the existence of evidence which, if accepted, would support the claim.

[62] On Mr. Nelson's appeal, the reasons for judgment being indexed at 2006 BCCA 442, Justice Rowles stated:

[25] An order under s. 29 of the Court of Appeal Act will go against Mr. Nelson only. The order will provide that proceedings must not be brought or commenced in the court by Mr. Nelson without leave of a justice. On any leave application, Mr. Nelson is directed to provide a draft notice of appeal or notice of application for leave to appeal, together with an outline of argument, not to exceed five pages, respecting the alleged errors in judgment of the lower court.

[63] Another case that provides further indication of what may result in a vexatious litigant's leave to file application being denied can be gleaned from the Court of Appeal's decision in *Jensen v. Jackman*, 2010 BCCA 6. In that decision, Justice Garson, in Chambers, was considering whether a vexatious litigant required leave to appeal an order that a vexatious

litigant not be able to file a proposed action. While neither written reasons nor a transcript of the chamber judge's decision in this court were available, Justice Garson made the following observations:

- [6] She attaches to her affidavit in the proposed Supreme Court action two proposed statements of claim, one is 742 paragraphs, and 70 pages in length, the second proposed action is 1578 paragraphs and 200 pages in length. In this Court Ms. Jensen has filed a memorandum of argument, also itself prolix. It is not possible to ascertain from these three sets of materials the nature of the claim or causes of action Ms. Jensen proposes to advance, other than in a most imprecise way.

Justice Garson ultimately determined that leave to appeal was as of right. However, the appeal was never pursued and was placed on the inactive list in October 2010.

- [64] Dr. Hokhold's situation is different. On the assumption that he does have a "reasonably founded or arguable case" in so far as the determination of his income for support purposes and/or parenting issues including where the children should reside, the real issue, based on his past conduct, is the manner in which he should be permitted to advance those claims.

- [65] I have decided that the relief should be granted in the form sought by Ms. Gerbrandt.

- [66] This will provide maximum flexibility to the justice hearing the application(s) and/or the trial judge who remains seized of, inter alia, support and parenting issues to decide whether the granting of leave may form part of directions given as part of the case management process. Directions could include:

- the length of affidavits and exhibits;
- redrafting materials as directed; and
- whether the inclusion of Ms. Gerbrandt's immediate family, if sought by Dr. Hokhold, was based on a reasonably founded or arguable case.

V: CONCLUSION

- [67] The application is granted in the terms set out in paragraph 51 above.

- [68] It follows that Dr. Hokhold's conduct has been reprehensible or deserving of reproof or rebuke and that Ms. Gerbrandt is entitled to her costs of this application as special costs.

"Abrioux, J."

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/sc/17/12/2017BCSC1249.htm>

CASE PAGE <https://chat.esheria.ai/case-law/canada/hokhold-v-gerbrandt-2017-bcsc-1249>

Prepared on 29 October 2026 · Esheria