

CANADA / JUDGMENT

Walker v. Kierans

2025 BCCA 232

COURT

British Columbia Court of Appeal

DECIDED

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2025 BCCA 232 Walker v. Kierans

COURT OF APPEAL FOR BRITISH COLUMBIA

Citation:

Walker v. Kierans,

2025 BCCA 232

Date: 20250704

Dockets: CA50255; CA50332; CA50333

Between:

Kathleen Walker

Appellant

(Petitioner/Respondent)

And

Margaret Mary Kierans

Respondent

(Respondent/Petitioner)

Before:

The Honourable Mr. Justice Butler

The Honourable Justice Riley

The Honourable Justice Gomery

On appeal from: Orders of the Supreme Court of British Columbia, dated

November 18, 2024 and November 29, 2024 (Kierans (Re), 2024 BCSC 2171, Vancouver Dockets S229990; S220769).

The Appellant, appearing in person:

K. Walker

Counsel for the Respondent:

C.R. Dheensaw

Place and Date of Hearing:

Vancouver, British Columbia

June 24 and 25, 2025

Place and Date of Judgment:

Vancouver, British Columbia

July 4, 2025

Written Reasons of the Court

Summary:

The appellant was declared a vexatious litigant on application in the court below. She appeals this order and an order denying an adjournment of the hearing of the vexatious litigant application.

Held: Appeals dismissed. The appellant has not identified a reviewable error capable of justifying interference with the orders under appeal. The judge exercised her discretion reasonably and judiciously in denying the adjournment and there was ample support for the decision to declare the appellant a vexatious litigant.

Reasons for Judgment of the Court:

Overview

- [1] Ms. Walker appeals two orders, both made at a hearing at which the respondent, Ms. Kierans, sought to have her declared a vexatious litigant. The first order denied Ms. Walker's application to adjourn the hearing. The second order declared her a vexatious litigant and ordered that she may not, except with leave of the court, initiate any proceedings in the Supreme Court of British Columbia or the Provincial Court of British Columbia.
- [2] The chambers judge, Justice Hoffman, denied the adjournment application in oral reasons that have not been transcribed for inclusion in the appeal record. She reserved judgment on the vexatious litigant application and subsequently delivered lengthy, substantive written reasons for judgment, indexed as Keirans (Re), 2024 BCSC 2171.

- [3] In Part 2 of her factum ("Errors in Judgment"), Ms. Walker alleges two errors, both pertaining to the vexatious litigant application and not the adjournment application.
- [4] The first alleged error is that the chambers judge did not take steps to ensure procedural fairness. Ms. Walker submits that "[e]very legal protection for procedural fairness was stripped from the Appellant during the vexatious litigant hearing" to the point that "[h]er very life was potentially put in jeopardy".
- [5] The second alleged error is less clearly described. Ms. Walker asserts simply that the chambers judge "erred in finding the Appellant a vexatious litigant". A vexatious litigant order engages an exercise of the court's discretion, but Ms. Walker does not say how the judge might have erred in this regard. In her lengthy factum, Ms. Walker does not challenge the chambers judge's statement of the governing law or the facts the judge found and set out in detail in the reasons.
- [6] For the reasons that follow, we dismiss the appeals. There is nothing in the material before us to suggest that the judge erred in the exercise of her discretion to refuse the adjournment application. The hearing of the vexatious litigant application was fair. On the evidence, it was open to the judge to make the orders she did, and we are not persuaded that she erred.

Issues

- [7] While there is much evidence Ms. Walker would have us address, having regard to the orders under appeal, there are only three issues:
1. Did the chambers judge err in refusing Ms. Walker's application for an adjournment?
 2. Did the chambers judge conduct a fair hearing?
 3. Did the chambers judge err in declaring Ms. Walker a vexatious litigant?
- [8] As is common in the case of an allegedly vexatious litigant, the application was brought against the backdrop of a lengthy history of applications brought by Ms. Walker. This history is detailed in an eight-page appendix to the chambers judge's reasons. It is not controversial. We will not repeat it and will touch on it only to the extent necessary to explain our conclusions.
- [9] Most of Ms. Walker's argument on this appeal is dedicated to questioning or indirectly undermining determinations made against her in prior proceedings. This is fundamentally misconceived. On a vexatious litigant application, what has already been decided remains decided. This Court has no choice but to accept the past decisions and reject Ms. Walker's criticisms of them. Moreover, Ms. Walker's attempts to relitigate past lawsuits work against her position on this appeal because the jurisprudence recognizes attempts to relitigate as a characteristic of vexatious litigation: *Holland v. Marshall*, 2010 BCSC 1560 at para. 8; *Lindsay v. Canada (Attorney General)*, 2005 BCCA 594 at paras. 25-26, both citing *Re Lang Michener v. Fabian* (1987), 37 D.L.R. (4th) 685, 1987 CanLII 172 (O.N.H.C.J.). The chambers judge

addressed this point in her reasons at paras. 54 and 65-74, but Ms. Walker is undeterred.

Background

- [10] Ms. Walker is a former lawyer. She is 69 years old. She suffered a significant head injury in 2008 and describes herself as disabled as a result. She suffered financial reverses, lost her home to foreclosure in 2015, and ceased practicing as a lawyer in 2016.
- [11] Ms. Walker represented herself in litigation against the Law Society, her disability insurer, and a moving company. In 2022, she made a court application that set the stage for proceedings concerning the care of her younger brother, Paul Kierans, who suffered from an intellectual disability and was legally incompetent. This became a dispute between Ms. Walker and the respondent, Ms. Kierans, who is Ms. Walker's older sister. Ms. Walker and Ms. Kierans both petitioned to be named as Paul's committee. Ms. Kierans succeeded. The issues included a dispute concerning Ms. Walker's access to Paul for visits.
- [12] Paul Kierans died on April 23, 2024, but Ms. Walker continued attempting to litigate questions concerning his status and care.
- [13] The judge made the following finding:
 - [21] The supporting affidavit material confirms that, in this proceeding, Ms. Walker has appeared before at least 14 Supreme Court judges prior to appearing before me in this matter. Ms. Walker has filed at least 12 different interlocutory applications seeking various relief with respect to Paul. However, as will be discussed below, the relief sought in these applications was often duplicative and mirrored the relief sought in her petition.
- [14] In April 2024, Ms. Kierans filed an application to have Ms. Walker declared a vexatious litigant. Five days were reserved for hearing the application as well as two applications filed by Ms. Walker. These were applications filed before Paul's death that addressed Ms. Walker's access to Paul for visits and an attempt to have Paul examined by medical practitioners. Ms. Kierans took the position that both of Ms. Walker's applications were moot.
- [15] The hearing was to take place during the week of November 18, 2024. It was preceded by two case management conferences, the first in September 2024 before Justice Edelman (as he then was), and the second on November 6, 2024 before Justice Hoffman.
- [16] At the November 6 case management conference, Ms. Walker advised of her intention to apply for an adjournment. Justice Hoffman directed that the adjournment application be brought on November 18, the day set for the commencement of the hearing of the vexatious litigant application. At the same case management conference, Ms. Walker advised that she suffers from a cardiac condition and produced dated letters from physicians describing her condition as life threatening and stating that she should not appear in court for more than two hours at a time. The judge directed that court would only sit during the mornings for the hearing of the vexatious litigant application.

Analysis

1. Did the chambers judge err in refusing Ms. Walker's application for an adjournment?
 - [17] In her written reasons for judgment on the vexatious litigant application, the judge records that she heard the adjournment application on the morning of November 18, 2024, stood down "for a period of time", and dismissed it. She states that Ms. Walker's submissions on the application went into great detail about her family history and referred to much information that was only tangentially relevant: at para. 34.
 - [18] The judge's refusal of Ms. Walker's application to adjourn engaged the exercise of a discretionary power. The discretion is broad and the standard of review on appeal is deferential. Appellate review is limited to determining whether the power was exercised judicially and in accordance with proper principles: *R. v. Earhart*, 2007 BCCA 614 at para. 55.
 - [19] On appeal, Ms. Walker has neglected to bring forward a transcript of the oral reasons given by the judge for dismissing the adjournment application. We cannot assume that the reasons reflect a failure to decide judicially and in accordance with proper principles.
 - [20] So far as can be discerned from Ms. Walker's materials, her argument for an adjournment of the hearing of the vexatious litigant application was that the hearing should have been postponed pending an RCMP investigation into complaints she had made concerning a representation agreement, ostensibly signed by Paul, that she believes was fraudulently prepared in February 2021. Ms. Walker describes the agreement as a forgery. The RCMP "investigation" in question was limited in scope as explained below. Because we have not been furnished with the judge's reasons, we do not know why the judge rejected Ms. Walker's argument. However, it cannot be that the judge was bound to accept it.
 - [21] The appeal of the order refusing an adjournment must be dismissed because Ms. Walker has not identified any error made by the judge.
2. Did the chambers judge conduct a fair hearing?
 - [22] What constitutes a fair hearing is a legal question. Questions concerning what the judge did are factual, though rarely controversial because judges act in open court where, according to the modern practice in British Columbia, everything is recorded.
 - [23] In her reasons, at paras. 32-40, the judge reviews in detail what happened during the hearing of the vexatious litigant application. In brief:
 - a) At the commencement of the hearing on November 18, 2024, Ms. Walker tendered the letter from her physician referring to a heart condition and stating that she should not appear in court for more than two hours at a time. It was dated in December 2019, approximately five years earlier. The judge notes that Ms. Walker deposed in a 2022 affidavit that her heart symptoms had been successfully treated. (In oral submissions on appeal, Ms. Walker points out that what she said in her affidavit was that the treatment brought her medical conditions under control but did not resolve them.)

- b) Court sat until 12:35 p.m. on November 18 without complaint from Ms. Walker.
- c) On November 19, the judge heard argument and gave oral reasons dismissing Ms. Walker's applications as moot. Ms. Kierans' counsel began submissions on the vexatious litigant application.
- d) At noon on November 19, Ms. Walker advised that she could only sit until noon. The judge directed that the hearing would continue until 12:30 p.m. Ms. Walker advised that she would leave the courtroom, the judge encouraged her to stay, and she left anyway.
- e) Ms. Kierans' counsel continued with her submissions and spent the rest of the morning reviewing passages from cases in which Ms. Walker had been involved. The judge directed counsel for Ms. Kierans to advise Ms. Walker of the specific passages referenced in her absence.
- f) Ms. Walker was present when court convened on November 20. She presented to the judge for signature a draft of the November 18 order refusing the adjournment application. The judge signed it. Ms. Walker complained that the application record assembled by Ms. Kierans' counsel did not contain all the materials she had listed in her application response. Ms. Walker then advised that she would not remain in court for the continuation of the hearing. The judge sets out Ms. Walker's advice and her response as follows at para. 37:

She then explained that she would not remain in the courtroom because I had endangered her life by declining to adjourn the proceedings at 12:00 p.m. the previous day and that my refusal to adjourn indicated that I was not impartial. I again reminded Ms. Walker that it was important for her to be present for this hearing because it had implications for her right to bring legal proceedings. I also warned that if she chose not to participate, there was authority allowing me to continue in her absence.

- g) Ms. Walker persisted in leaving the courtroom. The judge directed Ms. Kierans' counsel to review the list of materials Ms. Walker had indicated were not included in the application record and provide them to the court in a binder. The judge subsequently reviewed and considered those materials.
- h) The hearing continued in Ms. Walker's absence on November 20 and 21.
- i) Ms. Walker briefly returned to court twice on November 21. Shortly before the lunch break, she returned to advise that she intended to appeal the dismissal of her adjournment application. She handed up a page of objections to the vexatious litigant application in addition to those contained in her filed application response. In the afternoon, she returned again to hand up two more pages of objections to the vexatious litigant application.

- [24] To summarize, the judge made efforts to accommodate Ms. Walker's asserted health concern but Ms. Walker was dissatisfied with the extent of the accommodation the judge was willing to provide. As an expression of her dissatisfaction, Ms. Walker left the courtroom while the hearing continued. This was a deliberate decision to absent herself while the hearing was ongoing. She returned to the courtroom three times, but each time was unwilling to remain. She submitted written argument, which the judge received.
- [25] The judge's direction that the hearing continue until 12:30 p.m., and her decision to carry on with the hearing after Ms. Walker left the courtroom, were discretionary. They were made in the exercise of the inherent power and responsibility of a judge to manage the hearing of a proceeding with a view to the fundamental objectives of a judicial process. In the words of Rule 1-3(1) of the Supreme Court Civil Rules, B.C. Reg. 168/2009, the object is to secure the just, speedy and inexpensive determination of the proceeding at hand on its merits. In respect of directions such as these, the discretion is particularly broad. It is not bound by hard and fast rules as to how a judge ought to proceed.
- [26] Accordingly, as with the appeal of the refusal to adjourn the hearing, this Court should only interfere where the appellant is able to establish that the judge's power was not exercised judicially and in accordance with proper principles.
- [27] Ms. Walker submits that the hearing was unfair for several reasons.
- [28] First, she complains that materials listed in her application response were not included in the application record. There is nothing to this point because the gaps in the record were filled and the judge reviewed and considered everything that had been left out.
- [29] Second, she complains that the judge should not have doubted her limitations based on her heart condition based on the judge's reading of the 2022 affidavit. Ms. Walker says that "[i]f [the judge] required different or further evidence of the Appellant's disability she should have requested it, rather than making up medical assessments of her own".
- [30] We are not persuaded there was any unfairness in this regard. The judge had to deal with the evidence presented to her. She had physicians' letters that were more than five years old and a much more recent affidavit made by Ms. Walker that, on its face, called into question whether the physicians' letters remained accurate. The judge was under no obligation to advise Ms. Walker of her doubts and invite further evidence and submissions. She was charged with the management of a challenging chambers application in real time. She had to balance the articulated health concern against the possibility that, having lost the entirety of November 18 and part of November 19 to arguments concerning the adjournment application and mootness, there would not be enough time left in the week to complete hearing the vexatious litigant application.
- [31] The judge's ruling that court would continue until the lunch break at 12:30 p.m. meant that each day's hearing would last two hours and 15 minutes, net of the morning break. This was not much longer than the two-hour limit suggested in the physicians' letters.

- [32] Ms. Walker's third complaint is that she was not given "a safe opportunity to be heard". She argues that "[n]o one should have to potentially risk their life to respond to a vexatious litigant application".
- [33] It is far-fetched to suggest that the judge's ruling put Ms. Walker's life at risk. It is telling that Ms. Walker only took a stand against the ruling on November 19, after the judge had ruled against her on the adjournment application and dismissed her applications as moot. It is telling that, when Ms. Walker took her stand, her response was disproportionate to her stated concern in that she refused to stay for two hours on November 20 or 21.
- [34] Finally, Ms. Walker submits there was unfairness because on November 19, counsel for Ms. Kierans began making submissions from a version of the notice of application that Ms. Walker had not seen before, containing pinpoint references to the evidence that she was unable to verify during the hearing. She acknowledges that the document was handed to her as soon as she complained about it.
- [35] The document in question was an annotated version of the notice of application Ms. Walker had received. The annotations incorporated references to the evidence and authorities that counsel relied upon. In effect, it was a written submission consistent with and expanding upon the notice of application.
- [36] There was nothing unusual or unfair in the presentation of a written submission as described. Rule 8-1(16) contemplates the submission of written argument to the court on an application that is estimated to take more than two hours. The written submission was provided to Ms. Walker and she had an opportunity to review and address it. She was not put at a disadvantage by the inclusion into a document she had already seen of pinpoint citations to authorities and evidence already made known to her. She was not caught by surprise.
- [37] Taking everything into account, we conclude that the judge did not err by failing to afford Ms. Walker a fair hearing; the hearing was fair.
3. Did the chambers judge err in declaring Ms. Walker a vexatious litigant?
- [38] The Supreme Court's power to declare that a person is a vexatious litigant and restrain them from commencing proceedings without leave derives from s. 18 of the Supreme Court Act, R.S.B.C. 1996, c. 443, and also from the Court's inherent jurisdiction to control its own process: *Gichuru v. Pallai*, 2018 BCCA 78 at paras. 73-77. The chambers judge comprehensively reviewed authorities bearing on the exercise of the Court's power at paras. 50 to 60 of her reasons. As she noted at para. 58, the objective is to prevent the waste of court resources and avoid the "anguish, frustration and expense of having to mount defences to frivolous or vexatious lawsuits", quoting *Gichuru v. Purewal*, 2023 BCCA 345 at para. 17.

- [39] Ms. Walker interprets the vexatious litigant order as limiting her ability to defend herself by filing evidence in lawsuits that may be brought against her. That is not what the order says, and is not its effect. It is only an order limiting Ms. Walker's ability to initiate proceedings and does not address the defence of proceedings brought against her by others.
- [40] The judge did not err in her legal analysis.
- [41] The judge found that Ms. Walker's litigation conduct, viewed objectively, demonstrates almost all of the characteristics of vexatious litigation set out in Holland: at para. 62. This finding was thoroughly grounded in the evidence canvassed at great length at paras. 63 to 93 of her reasons and in the appendix.
- [42] In the circumstances, it was open to the judge to conclude that she should exercise her discretion to declare Ms. Walker a vexatious litigant. The judge gave cogent reasons for coming to this conclusion. She stated:
- [94] I am satisfied that it is necessary to prevent abuse of the court's process and therefore, in the public interest, to require Ms. Walker to seek leave to commence any proceedings in this Court or the Provincial Court. Ms. Walker has demonstrated an inability to exercise the judgment required to identify reasonable grounds for the claims, applications and appeals she has initiated, not only in this proceeding but in other proceedings as well. She has also demonstrated an unwillingness to comply with judicial directions by filing materials and setting down applications in contravention of orders that she refrain from doing so.
- [95] An order under s. 18 of the Supreme Court Act does not completely eliminate Ms. Walker's ability to access justice. Rather, it puts in place a screening mechanism that will allow Ms. Walker to advance meritorious claims in a way that safeguards the resources of the court and strengthens its ability to provide justice to the many other litigants before it.
- [43] Ms. Walker submits that, in coming to this conclusion, the judge overlooked "the most important issue". She says that the critical issue involved her allegation that Ms. Kierans was improperly motivated to bring the vexatious litigant application by a desire to discredit Ms. Walker in anticipation of the police investigation resulting from Ms. Walker's complaint to the RCMP. In Ms. Walker's words, the application was "a strategy to discredit the Appellant as a witness and complainant in the ongoing police investigation".
- [44] What Ms. Walker describes as a police investigation came about in this way. In August 2022, she attended at an RCMP detachment and described to Cst. Kumar her concerns about the representation agreement purportedly signed by Paul in February 2021. She says that Cst. Kumar said she would look into it, and Ms. Walker heard nothing further. In October 2023, Ms. Walker complained to the RCMP's Civilian Review and Complaints Commission that Cst. Kumar had failed to investigate her allegation that the representation agreement was a forgery. In late March 2024, Ms. Walker received a letter acknowledging her complaint under Part VII of the Royal Canadian Mounted Police Act, R.S.C. 1985, c. R-10, and stating that the Commission had opened a file and assigned an investigator to assess her complaint.

The complaint process under Part VII of the statute is concerned with the conduct of members of the RCMP, not the investigation of crimes.

- [45] The theory of a compromised police investigation is unsound. Moreover, even if a police investigation were under way, Ms. Walker's theory as to Ms. Kierans' motivation is unreasonably speculative. It is doubtful in the extreme that any genuine police investigation into Ms. Kierans' conduct could be compromised by a vexatious litigant order made against Ms. Walker in a civil proceeding, or that Ms. Kierans' object in pursuing the vexatious litigant application was to discredit Ms. Walker as a complainant. Ms. Kierans had a much simpler and more obvious reason to bring the application: to stop Ms. Walker from suing her again, without good cause.
- [46] Ms. Walker's argument responds to the vexatious litigant application by attacking the applicant. It is an ad hominem argument that distracts from what is really at issue. Ms. Kierans' supposed conduct was not the most important issue on the vexatious litigant application. It was not an issue at all. What was in issue was Ms. Walker's past vexatious conduct and the likelihood that it would continue in the future absent court intervention.

Disposition

- [47] The appeals are dismissed.

"The Honourable Mr. Justice Butler"

"The Honourable Justice Riley"

"The Honourable Justice Gomery"

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