

CANADA / JUDGMENT

Yang v. Shi

2020 BCSC 1857

COURT

Supreme Court of British Columbia

DECIDED

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2020 BCSC 1857 Yang v. Shi

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation:

Yang v. Shi,

2020 BCSC 1857

Date: 20201201

Docket: S196216

Registry: Vancouver

Between:

Lihong Yang

Appellant

And

Li Shi

Respondent

- and -

Docket: S194489

Registry: Vancouver

Between:

Lihong Yang

Petitioner

And

Franco Del Bianco, Jordan Olar, the District of West Vancouver

Respondents

Before: The Honourable Madam Justice Norell

Reasons for Judgment

Appearing in person:

L. Yang

Counsel for L. Shi in S196216:

C. Shen

Counsel for F Bianco, J. Olar and the District of West Vancouver, in S194489:

S. Boyce

Place and Dates of Hearing:

Vancouver, B.C.

November 29, 2019

December 9, 2019

January 10, 2020

September 11 and 15, 2020

Place and Date of Judgment:

Vancouver, B.C.

December 1, 2020

Introduction and Issues

- [1] These are reasons on the applications of the defendants in both proceedings seeking: a declaration that the plaintiff Ms. Lihong Yang is a vexatious litigant and an order precluding Ms. Yang from instituting further legal proceedings without leave of the Court; and an order that all proceedings be stayed until outstanding costs ordered to date have been paid. The defendant Ms. Shi also seeks an order for security for costs of the pending appeal in the Supreme Court and a stay of that appeal until the security is posted.
- [2] In August 2015, Ms. Yang entered into a tenancy agreement for a room and shared kitchen facilities in the home of Ms. Li Shi, who is the defendant in the first named proceeding. Ms. Yang and her teenaged daughter lived in the room. The tenancy relationship was acrimonious. In October 2015, Ms. Shi gave notice to terminate the tenancy as of November

28, 2015. Ms. Yang maintained the termination was unlawful and that she and her daughter had a right to stay in the home. On November 30, 2015, after an alleged altercation with Ms. Yang, Ms. Shi called the police who attended the home and suggested to Ms. Yang that she stay elsewhere for the night. While Ms. Yang and her daughter were away, Ms. Shi changed the locks. Ms. Yang subsequently attended the home with a police escort on a few occasions to obtain her belongings. One such occasion was on January 4, 2016. On that day, two of the defendants in the second named proceeding, Mr. Franco Del Bianco and Mr. Jordan Olar (the "Police Officers") who are employed by the third defendant, the District of West Vancouver (the "District"), attended the premises. An alleged altercation took place between the Police Officers and Ms. Yang. Ms. Shi subsequently had Ms. Yang's remaining belongings removed from the home and placed in storage. Ms. Yang filed an application for dispute resolution to the Residential Tenancy Branch ("RTB"), but this was dismissed for lack of jurisdiction.

- [3] The events surrounding the termination of the tenancy and the attendance of the Police Officers on the one occasion, have spawned a nearly five-year history of criminal and civil litigation. I will summarize those proceedings before turning to the legal principles and analysis.

Criminal Proceedings

- [4] Due to her alleged conduct after termination of the tenancy, on April 7, 2016, Ms. Yang was charged with criminal harassment of Ms. Shi between November 30, 2015 and March 29, 2016, contrary to s. 264 of the Criminal Code, R.S.C. 1985, c. C-46. The Crown eventually stayed the charge on February 22, 2017.
- [5] In *R. v. Yang*, 2017 BCSC 838, Ms. Yang pursued costs against the Crown for several applications and appeals which Ms. Yang had brought, but had not yet been heard, prior to the charge being stayed. As reviewed by Justice Donegan at paras. 4-27 of that case, Ms. Yang had filed four appeals of orders arising from several interlocutory applications she had made during the prosecution. At an application to extend time for filing transcripts, Justice Schultes clearly told Ms. Yang that the orders she was seeking to appeal could not be appealed at that time, and she had to wait until the prosecution was ended. He advised her that her appeals were a "pointless waste of money". Despite this caution, Ms. Yang persisted with the appeals and filed transcripts. Justice Donegan refused to award Ms. Yang costs, finding that Crown counsel's conduct had been appropriate throughout and Ms. Yang had been advised by Schultes J. that dismissal of the appeals would be the ultimate outcome. Ms. Yang had incurred unnecessary costs.

- [6] Subsequently, Ms. Yang sought leave to appeal Donegan J.'s order to the Court of Appeal (Appeal No. 44438). This application was dismissed. In reasons indexed at *R. v. Yang*, 2017 BCCA 349, Justice Frankel stated that Ms. Yang's appeal had "no merit and her application for leave to appeal is doomed to fail". He noted that Ms. Yang mentioned that she might commence a civil action against the Crown, and his efforts to explain to Ms. Yang why he considered her proposed appeal to be hopeless were unsuccessful.
- [7] Ms. Yang further sought leave to appeal Frankel J.A.'s order to the Supreme Court of Canada (Appeal No. 37901). This was also dismissed, indexed at *Lihong Yang v. Her Majesty the Queen*, 2018 CanLII 33052 (S.C.C.).

Civil Proceedings against the District and the Police Officers

Provincial Court Action

- [8] On March 3, 2016, Ms. Yang filed a notice of claim No. 162524 in the Provincial Court (North Vancouver Registry) against the District and the Police Officers concerning the January 4, 2016 events. She alleges that the Police Officers falsely arrested and assaulted her. She claims general, special, and punitive damages.
- [9] On August 8, 2016, the District and the Police Officers filed a reply denying the allegations. They also pleaded that the Police Officers are not personally liable pursuant to s. 21 of the Police Act, R.S.B.C. 1996, c. 367, and the District is statutorily liable for any torts committed by the Police Officers in the performance of their duties. In summary, that section provides statutory immunity to a police officer for any act or omission by him or her in the performance or intended performance of his or her duties, unless the police officer has "been guilty of dishonesty, gross negligence or malicious or willful misconduct".
- [10] On October 18, 2016, the District and the Police Officers filed an application for an order dismissing Ms. Yang's action against the Police Officers pursuant to s. 21 of the Police Act. The application was heard on February 21, 2017 by Judge Challenger, and an order was made that day, which was subsequently revised on February 28, 2017. The revised order required Ms. Yang to post \$9,381 as security within three months. If that amount was not posted, the defendants could renew their application to have the claim against the Police Officers dismissed. The action against the District continued. Judge Challenger told Ms. Yang that despite Ms. Yang's insistence on suing the Police Officers, they will not be held personally liable, and she could recover damages against the District if she established her allegations against the Police Officers.
- [11] On April 20, 2017, Ms. Yang filed an application for orders: staying the orders of Judge Challenger pending a judicial review of the decision in the Supreme Court (see below); and that Judge Challenger be recused from hearing any further proceedings in the action. Ms. Yang states that the stay was granted.

First Judicial Review Petition

- [12] On March 21, 2017, Ms. Yang filed petition No. 172654 in the Supreme Court (Vancouver Registry) for judicial review of Judge Challenger's orders that she post security. The District and the Police Officers secured a hearing date for November 2, 2018. Ms. Yang applied twice, once successfully, to adjourn the hearing.
- [13] On December 7, 2018, the parties appeared in before Justice Grauer. He set aside the orders of Judge Challenger for the payment of security, and ordered that the issue of the personal liability of the Police Officers be remitted to the Provincial Court for re-hearing, with costs of the petition to follow the event of the Provincial Court action against the Police Officers. He also dismissed "the request" that Judge Challenger recuse herself.

Provincial Court

- [14] Returning to the Provincial Court, on March 19, 2019, the parties re-argued the application to have the action against the Police Officers dismissed. Judge Bond dismissed the action against the Police Officers. She explained to Ms. Yang that she was not holding that the Police Officers did nothing wrong, but that she found on the pleadings that Ms. Yang had no reasonable chance of success in proving her claims of personal liability against the Police Officers. If the trial judge ultimately finds that the Police Officers committed any tortious acts, Ms. Yang will be able to recover against the District which is statutorily liable for the Police Officers.

Second Judicial Review Petition

- [15] On April 16, 2019, Ms. Yang filed petition No. 194489 in the Supreme Court (Vancouver Registry) for judicial review of the order of Judge Bond dismissing the claim against the Police Officers.
- [16] The petition was heard on August 20, 2019 before Justice Duncan, who in reasons indexed at 2019 BCSC 1629, dismissed the petition.
- [17] On October 17, 2019, in reasons indexed at 2019 BCSC 1777, Duncan J. ordered that Ms. Yang pay the District and the Police Officers costs for their preparation and attendance at court in response to the petition.

Court of Appeal

- [18] On September 12, 2019, Ms. Yang filed a notice of appeal (Court of Appeal No. 46366) of the dismissal of the second petition. On the same day, Ms. Yang also filed an application pursuant to s. 56 of the Court of Appeal Rules, B.C. Reg. 279/2001 to obtain an order for waiver of court fees payable in the Court of Appeal.

- [19] On September 27, 2019, the District filed an application seeking orders that: Ms. Yang's application to waive fees be dismissed; Ms. Yang post security for costs; and the appeal be stayed until security is posted.
- [20] On October 8, 2019, both applications were heard before Justice Fenlon, who ordered that: Ms. Yang's application to waive fees is dismissed; Ms. Yang is required to post \$2,250 for security for costs; and the appeal is stayed until that sum is paid into court. In her reasons, Fenlon J.A. found that Ms. Yang had not established the level of merit on the appeal required for a waiver of fees.
- [21] On October 15, 2019, Ms. Yang filed an application to discharge or vary Fenlon J.A.'s order.

Provincial Court

- [22] Back in the Provincial Court action, on June 27 and September 13, 2019, Ms. Yang brought two applications for several procedural orders, including to: change the date of the exchange of documents and the pre-trial conference until after the judicial review decision; obtain and be permitted to use at trial certain evidence; waive fees; and add claims and documents if she finds more "illegal activity". These two applications resulted in multiple hearing dates. The first application was adjourned on July 12, 2019 and partially heard on August 27, 2019 by Judge Smith, with some orders made at that time. Ms. Yang filed the second application to have the remainder of the June 27, 2019 application heard. The parties attended hearings on September 25 and December 4, 2019 with further orders made by Judge Smith, but the application was not completed. The continuation of the application was set for January 7, 2020.
- [23] On December 20, 2019, counsel for the District filed an application seeking a stay of the Provincial Court action until this vexatious litigant application was determined. The parties attended on January 2, 2020 but the hearing was adjourned to January 7, 2020 as Ms. Yang did not bring an interpreter. Ms. Yang was ordered to have a court-certified interpreter for all subsequent proceedings in the Provincial Court.
- [24] On January 7, 2020, the applications could not be heard as the judge was unavailable. A further hearing date was adjourned due to the COVID-19 pandemic.
- [25] On June 22, 2020, the parties were scheduled to appear in Provincial Court to set down the adjourned hearing from January 7, 2020. On the same date, Ms. Yang brought another application seeking orders: to delay the hearings until after her pending trip to China; that Judge Smith "quit" her case; and the District provide documents which she alleges had been ordered to be produced on August 27, September 25 and December 4, 2019. This resulted in further court appearances on August 6 and September 2, 2020 the former of which was adjourned as Ms. Yang did not have travel details or an interpreter. On September 2, 2020, Judge Smith, adjourned the matter to the judicial case manager to schedule a pre-trial conference and three days of trial after Ms. Yang's return from China in May 2021.

Third to Fifth Judicial Review Petitions

- [26] District counsel submits that on September 23, 2019, Ms. Yang filed a requisition No. 1910630 in the Supreme Court (Vancouver Registry) seeking judicial review of Judge Smith's decision of August 27, 2019 refusing to make an order allowing the use of certain documents at trial. I was unable to locate a filed petition, but an unfiled petition is attached to an application made that day for waiver of court fees.
- [27] On October 24, 2019, Ms. Yang filed petition No. 1911988 in the Supreme Court (Vancouver Registry) for judicial review of the order of Judge Smith on September 25, 2019.
- [28] Thereafter, Ms. Yang, through a consent order dated December 5, 2019 and an order dated January 8, 2020, "merged" into petition No. 1910630, the orders of Judge Smith made on September 25, 2019 and December 4, 2019. It therefore appears petition No. 1911988 was rendered redundant. Ms. Yang was given leave to file an amended petition, but there was no amended petition in the materials, nor is one in the court file.
- [29] After these applications were filed, but before this hearing was concluded, Ms. Yang continued to expand her judicial review of Judge Smith's orders. On July 8, 2020, Ms. Yang requested counsel for the District to agree to "merge" the judicial reviews arising out Judge Smith's orders made on June 22, 2020 into petition No. 1910630. Counsel for the District consented to the order. There is an October 23, 2020 consent order merging this, and stating the petition "will be amended". Again, no amended petition is in the materials filed or the court file.
- [30] On July 21, 2020 Ms. Yang filed petition No. 207210 in the Supreme Court (Vancouver registry) seeking judicial review of Judge Smith's June 22, 2020 orders.

Bills of Costs

- [31] In October 2019, counsel for the Police Officers forwarded to Ms. Yang a draft bill of costs in the amount of \$8,916.94, pursuant to the order of Grauer J. (as he then was) from the first judicial review, and a draft bill of costs in the amount of \$6,887.21, pursuant to the order of Duncan J. dismissing the second judicial review.
- [32] Ms. Yang responded that she will not agree to any costs and she was not available until next year for any assessments as she had several other cases to address. She told counsel for the District that she should wait for the "other case" to finish, and requested counsel's availability for the review hearing (of Fenlon J.A.'s order) in the Court of Appeal. Ms. Yang states counsel did not provide her with dates but instead served her with this vexatious litigant application. On November 25, 2019, counsel for the District provided Ms. Yang with her available dates in January and February 2020 for a hearing in the Court of Appeal.

Other Applications and Orders Sought with respect to Costs

- [33] In each petition filed by Ms. Yang, she also filed an application for an order that she be exempt from paying any court filing fees. This order was granted in each case except with respect to petition No. 1911988. On October 23, 2019, Master Cameron dismissed the application. On October 31, 2019, Ms. Yang filed a request to re-appear before Master Cameron for an order that court fees be waived and that she be reimbursed the court filing fees of \$200. This request to re-appear was denied.
- [34] In each petition, Ms. Yang has also sought: an order for costs, increased costs and special costs against the District and the Police Officers; and an order that she be exempt from any costs that may be claimed by those parties against her.
- [35] On October 9, 2019, Ms. Yang filed a request to appear before Grauer J. to have the issue of costs in the first judicial review re-heard. This request to re-appear was also denied.

Civil Proceedings against Ms. Shi

Provincial Court Action

- [36] On November 15, 2017, Ms. Yang filed a notice of claim No. 1725921 in the Provincial Court (North Vancouver Registry) against Ms. Shi. Ms. Yang alleged that Ms. Shi breached the tenancy agreement and made false accusations against her resulting in the criminal charges. She claimed: damages for the cost of other accommodations and lost or damaged chattels; the costs and legal fees of defending the criminal charge; return of her security deposit; and aggravated damages. The total claim exceeded the damages claim limit of \$35,000.
- [37] On January 2, 2018, Ms. Shi filed a reply and counterclaim. She alleged: the tenancy was for three months and she gave notice to Ms. Yang to vacate, which Ms. Yang refused; on November 30, 2015, Ms. Yang assaulted her; thereafter, Ms. Yang harassed her; and Ms. Yang did not remove all of her belongings, forcing Ms. Shi to remove and store them at a cost. The trial was set for August 13-14, 2018.
- [38] On March 19, 2018, Ms. Yang filed an application for an order that her husband and her daughter, who were in China and the U.S.A. respectively, be permitted to testify at the trial by telephone, and to dismiss parts of Ms. Shi's counterclaim regarding the assault and harassment.
- [39] On April 3, 2018, Ms. Yang filed an application for an order that she could use Crown disclosure documents at the trial. On April 17, 2018, Judge Merrick ordered that the two applications be adjourned to the judicial case manager to set a date for the applications before the trial judge.

- [40] On May 4, 2018, Ms. Yang filed an application for an order to use an uncertified interpreter at the application hearing and trial, and that she be able to reschedule the trial date without application if she could not find a certified interpreter.
- [41] The above three applications were heard on May 17, 2018 before Judge Harris. Judge Harris dismissed Ms. Yang's application to use an uncertified interpreter at trial. He adjourned the trial, with new trial dates to be set in the fall of 2018 in conjunction with the availability of a certified interpreter; and ordered that once new trial dates were scheduled, Ms. Yang could bring new applications regarding disclosure items being sought. Any further applications brought must be done with the benefit of an approved/certified court interpreter.

First Judicial Review Petition

- [42] On June 15, 2018, Ms. Yang filed petition No. 186806 in the Supreme Court (Vancouver Registry) for judicial review of the orders of Judge Harris. The petition was not served on Ms. Shi's counsel until September 12, 2018.

Provincial Court

- [43] Returning to the Provincial Court, on June 22, 2018, Ms. Yang filed a new application seeking orders that: her husband and daughter appear by phone or through affidavit; she be permitted to use Crown disclosure documents at the trial; and that portions of Ms. Shi's counterclaim be dismissed.
- [44] On June 25, 2018, Ms. Shi filed a cross-application for: an order seeking adjournment of the now October 25-26, 2018 trial dates as her husband was terminally ill, and other procedural orders.
- [45] The two applications were heard by Judge Bakan on July 24, 2018. She dismissed Ms. Yang's applications to: have witnesses attend by telephone or give evidence by affidavit, and stated they must attend in person; determine what use may be made of the Crown documents as that must be determined by the trial judge; and dismiss portions of Ms. Shi's counterclaim. Judge Bakan dismissed Ms. Shi's application to adjourn the trial as there was a lack of an evidentiary basis.
- [46] On July 31, 2018, Ms. Yang filed an application to obtain a CD-recording and a copy of the transcript of the hearing before Judge Bakan in order to correct mistakes that Ms. Yang alleges the interpreter made. The application record states that Judge Challenger dismissed this application. Ms. Yang states Judge Challenger permitted her to listen to the audio recording.

- [47] On August 14, 2018, Ms. Yang filed a further application seeking repeat orders that: she be permitted to use Crown disclosure at trial; her husband and daughter be permitted to attend trial by telephone, or this time also by video; she be provided with a CD and transcript of the proceedings before Judge Bakan; and part of the counterclaim of Ms. Shi be dismissed. She also sought other procedural orders.
- [48] On August 16, 2018, Ms. Shi filed an application for: costs of having to attend a repeat application seeking the same relief; and an order that Ms. Yang not be permitted to file any further applications in Provincial Court except with her consent or by leave of the court.
- [49] On August 27, 2018, the parties appeared before Judge Challenger. At the outset, Ms. Yang asked Judge Challenger to recuse herself. Judge Challenger decided to do so and the matter was adjourned.
- [50] These applications were heard on September 5, 2018 before Judge Brownstone. She dismissed all of Ms. Yang's repeat applications and made other procedural orders. Ms. Shi's application for costs was dismissed. Judge Brownstone ordered that Ms. Yang not be permitted to file further applications in the Provincial Court unless the defendant consents or the court grants leave.

Second Judicial Review Petition

- [51] On August 23, 2018, Ms. Yang filed petition No. 189243 in the Supreme Court (Vancouver Registry) for judicial review of Judge Bakan's orders of July 24, 2018. An amended petition was filed on September 12, 2018. Neither the petition nor amended petition were served until September 12, 2018.
- [52] On September 12, 2018, Ms. Yang obtained a without-notice order that the two petitions be heard together on October 4, 2018, prior to the trial date in the Provincial Court.
- [53] Following receipt of the first and second petitions, Ms. Shi's counsel wrote to Ms. Yang to advise her: of defects in the petitions; that transcripts are required and will likely not be ready in time for the hearing; and of his position that judicial review is premature and that she should await the conclusion of the trial. On September 19, 2018, Ms. Yang obtained a further without-notice order adding the Attorney General as a respondent to the petitions.
- [54] On October 4, 2018, the petitions came on for hearing before Justice Macintosh. He ordered that: the petitions be adjourned generally and may not be re-scheduled before the conclusion of the Provincial Court proceedings, except as provided in his order; Ms. Yang may re-schedule the hearing of the petition for review of Judge Bakan's order, but only with respect to the order that Ms. Yang's witnesses must attend trial in person; instead of re-scheduling a judicial review pursuant to his order, Ms. Yang may adjourn the trial of the Provincial Court action to a date when her husband and daughter are available to attend in person; and other procedural orders.

- [55] On October 15, 2018, Justice Sharma heard the petition with respect to Judge Bakan's order and dismissed the petition with costs payable to Ms. Shi.

Bills of Costs and Appeal in the Supreme Court and Court of Appeal

- [56] Following Sharma J.'s order, Ms. Shi prepared a draft bill of costs. On January 10, 2019, Master Baker assessed costs payable by Ms. Yang to Ms. Shi in the amount of \$4,379.22. Ms. Yang has not paid that amount.
- [57] On January 11, 2019, Ms. Yang filed notice of appeal in petition No. 189243 in the Supreme Court (Vancouver Registry) of Master Baker's order. The hearing was set for dates in March and April 2019, but was adjourned. The hearing was eventually set for September 20, 2019, but Ms. Shi applied for an adjournment based on late filing of materials from Ms. Yang. On September 20, 2019, Jackson J. ordered: the costs appeal be adjourned; Ms. Yang take steps to expeditiously reset the appeal; and costs of \$1,000 be awarded to Ms. Shi payable forthwith. Ms. Yang has not paid that amount.
- [58] On October 18, 2019, Ms. Yang filed notice of appeal No. 46449 in the Court of Appeal, appealing the costs order of Jackson J.

Provincial Court

- [59] Meanwhile, back in Provincial Court, the trial of the action was heard on October 25-26, 2018 before Judge Brownstone, but did not conclude. A continuation was set for March 1, 2019.
- [60] On December 12, 2018, Ms. Yang filed an application seeking orders to: obtain an audio recording of the trial proceedings on October 25-26, 2018 as she alleges the interpreter made errors; subpoena the Police Officers and the RTB adjudicator; introduce additional evidence; again, have her husband testify by phone or video; and if there is no interpreter, that she can reschedule the trial date without application. On December 19, 2018, Judge Brownstone ordered that Ms. Yang may listen to the audio recording of the trial. She dismissed the applications to: subpoena the police and RTB adjudicator; permit Ms. Yang's husband to testify by telephone or video; adduce further evidence; and to reschedule the trial without making an application. Judge Brownstone granted Ms. Yang leave to file an application to adjourn if she was unable to find an interpreter for the continuation of the trial.
- [61] On February 26, 2019, Ms. Yang filed an application for short leave to adjourn the trial due to a lack of a certified interpreter, and to waive any potential future costs that Ms. Shi might claim against her. On February 27, 2019, Judge Brownstone granted short leave, but dismissed the application to adjourn the trial and waive costs. She ordered that Ms. Yang could use an uncertified interpreter at trial.

Third and Fourth Judicial Review Petitions

- [62] On January 15, 2019, Ms. Yang filed petition No. 190263 in the Supreme Court (Vancouver Registry) for judicial review of the order of Judge Brownstone on December 19, 2018 dismissing her application to admit certain further evidence.
- [63] On March 27, 2019, Ms. Yang filed petition No. 193620 in the Supreme Court (Vancouver Registry) for judicial review of the February 27, 2019 orders of Judge Brownstone.

Provincial Court

- [64] Back in the Provincial Court, the trial continued on March 1, 2019. Judge Brownstone issued written reasons on April 25, 2019. She found the parties never reached an agreement on the termination provisions of the tenancy. She implied a term of one month's notice, and held that Ms. Shi had given notice. As a result, she did not need to address Ms. Yang's claim for damages arising from the alleged breach of the tenancy. She ordered that Ms. Shi return the \$450 security deposit. She dismissed Ms. Yang's claims for damage to furniture and a piece of missing jade. She dismissed Ms. Yang's claim that Ms. Shi "faked a crime" without making any finding about the merits of such a claim, as there is no jurisdiction in the Provincial Court to hear a claim for malicious prosecution. She dismissed Ms. Yang's claim for aggravated damages. She dismissed Ms. Shi's claim for lost rental income. She awarded Ms. Shi \$482.50 for the cost of removing and storing Ms. Yang's belongings when Ms. Yang failed to remove them. She dismissed Ms. Shi's claim for the costs of legal advice and aggravated damages. As there was divided success, she ordered that neither party be awarded costs. After setting off the two awards, Ms. Yang was ordered to pay \$32.50 to Ms. Shi.
- [65] In May 2019, Ms. Yang filed several applications and obtained orders to: permit her to listen to the recording of the trial as she alleges that the interpreter made many mistakes; to obtain a CD of the recording of the trial and the application before Judge Bakan; and to have transcripts of the trial be sent to the Supreme Court. These were all in preparation of her appeal of Judge Brownstone's order.
- [66] In July 2019, Ms. Yang filed applications in the Provincial Court and Supreme Court to "seal and transfer" the Provincial Court file to the Supreme Court. Ms. Yang states that she discovered there were documents missing from the Provincial Court file and she wanted to make the court file safe. Ms. Yang states she was advised by the Provincial Court Registry that she had to make an application in the Supreme Court. When she did so, she was told by the Justice that she had to apply in the Provincial Court. As a result, she returned to the Provincial Court and filed an application to seal and transfer the file. On July 19, 2019, Judge Bond dismissed that application.

Fifth Judicial Review Petition

[67] On July 30, 2019, Ms. Yang filed petition No. 198444 in the Supreme Court (Vancouver Registry) for judicial review of the July 19, 2019 order of Judge Bond.

Appeal of Trial Decision and Merger of Petitions

[68] On June 3, 2019, Ms. Yang filed a notice of appeal No. 196216 in the Supreme Court (Vancouver Registry) of Judge Brownstone's trial judgment. The same day, Ms. Yang obtained a without notice order to "join" and "merge the proceeding and paper works" of petitions No. 190263 and No. 193620 to appeal No. 196216 and for them to be heard at the same time.

[69] Ms. Yang unilaterally set down the appeal for hearing on September 27, 2019. Ms. Yang was advised that counsel was not available that day. Ms. Yang refused to reschedule the hearing. On August 13, 2019, Ms. Shi filed an application to adjourn the hearing of the appeal. On September 4, 2019, Master Muir adjourned the hearing and ordered that it may not be re-set until after this vexatious litigant application had been heard or until November 30, 2019, whichever was earlier. Master Muir awarded Ms. Shi costs of the adjournment fixed at \$500.

[70] Ms. Yang states she has requested Ms. Shi's counsel to provide her with dates to hear all of the outstanding proceedings, but that he refused as he was awaiting the result of this vexatious litigant application.

Applications and Orders Sought with respect to Costs

[71] In each petition filed by Ms. Yang, she also filed an application for an order that she be exempt from paying any court filing fees. This order was granted in each case except with respect to petition No. 190263. On January 10, 2019, Master Harper dismissed the application. On the same day, Ms. Yang filed a notice of appeal in petition No. 190263 of Master Harper's order.

[72] On June 3, 2019, Ms. Yang also filed an application to waive the \$200 security for costs required by s. 8 of the Small Claims Act, R.S.B.C. 1996, c. 430, for her appeal of Judge Brownstone's trial order. Ms. Yang obtained an order waiving court filing fees for the appeal.

[73] In each petition, Ms. Yang has also sought an order for costs, increased costs and special costs against Ms. Shi, and an order that she be exempt from any costs that may be claimed by Ms. Shi.

History of These Applications

- [74] On September 25, 2019, Ms. Shi filed the present vexatious litigant application returnable November 29, 2019. On November 12, 2019, the District filed a similar application, also returnable November 29, 2019. Ms. Yang objected to having the applications heard together. On November 26, 2019, the District brought an application before Master Muir who ordered that the two applications be heard together on November 29, 2019. Costs were fixed at \$400 payable to the District and the Police Officers, and \$400 payable to Ms. Shi.
- [75] The applications came on for hearing before me on November 29, 2019. At that time, Ms. Yang applied without notice, for an adjournment of the applications. I granted the adjournment and set the hearing for December 9, 2019.
- [76] On December 9, 2019, the hearing proceeded and Ms. Yang made submissions for two hours, but did not finish her submissions. She said she required another one to two hours. The application was adjourned with the parties to obtain a continuation date for one day.
- [77] The defendants secured a new date for January 10, 2020. Ms. Yang did not agree to the date. On January 2, 2020, Ms. Yang filed an application returnable January 10, 2020 seeking an adjournment until after March 7, 2020. Amongst other orders sought by Ms. Yang, was that she be granted leave to bring a cross-application at the same time as the new hearing date. A draft application was not filed, and the exact nature of the application was not specified, but it appeared to be an allegation against at least one of the opposing counsel. I declined to grant leave but granted the adjournment application to March 16, 2020. Ms. Yang agreed to that date and said she would be available and ready. The COVID-19 pandemic intervened and the March 16, 2020 hearing was adjourned.
- [78] On August 10, 2020, the defendants filed a request to appear to reset the continuation. I directed the hearing be reset for September 15, 2020. On September 1, 2020, Ms. Yang filed an application to adjourn hearing until sometime after May 2021. I dismissed her application.
- [79] Finally, complaints regarding interpreters have been a continuing theme throughout Ms. Yang's proceedings in the Provincial Court. Although English is not her first language, I found Ms. Yang could communicate and understand English sufficiently to proceed on these applications.
- [80] I turn now to the three orders sought by the defendants.

Vexatious Litigant Order and Stay of Proceedings

- [81] The Supreme Court Act, R.S.B.C. 1996, c. 443 provides the court with authority to make an order which requires a person to obtain leave of the Court prior to instituting legal proceedings. Section 18 states:

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.

- [82] The purpose of s. 18 is to prevent the habitual abuse of court processes. The judge hearing such an application must consider the nature of past litigation conduct and whether it is likely to continue, in determining whether it should impose a gatekeeping function to control anticipated future litigation conduct. The authority should be exercised with caution, bearing in mind the right of every person to access the courts, and recognizing that such an order does not preclude access to the courts but only requires the litigant to obtain leave: *Bryfogle v. Smit*, 2007 BCSC 457 at para. 64, *aff'd* 2009 BCCA 256 [Bryfogle]; *Green v. Proline Management Limited*, 2017 BCSC 1656 at para. 60.
- [83] "Habitual" in s. 18 does not refer only to the number of different proceedings a party commences, but also to the nature of the litigant's conduct within a particular action itself: *Semenoff Estate v. Semenoff*, 2017 BCCA 17 at para. 34. The term "legal proceedings" in s. 18 includes interlocutory applications that raise a new matter or cause: *Pearlman v. Vancouver Police Department*, 2012 BCSC 1179 [Pearlman] at para. 25.
- [84] The term "vexatious" in s. 18 refers to proceedings that ought not to have been brought: *T.J.H. v. C.C.H.*, 2003 BCCA 277 at para. 16. In *Lang Michener Lash Johnston v. Fabian* (1987), 37 D.L.R. (4th) 685 (Ont. H. C.), the Court summarized hallmarks of vexatious conduct at para. 20:
- (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.
- [85] An order pursuant to s. 18 is prospective. It does not apply to pre-existing unrelated proceedings in the absence of an express term to that effect; or to applications filed before the order: Pearlman at para. 20. Section 18 orders can be made to apply to new applications within existing legal proceedings: Pearlman at para. 22; British Columbia (Attorney General) v. Lindsay, 2007 BCCA 165.
- [86] While s. 18 refers only to legal proceedings in the Provincial Court or Supreme Court to establish whether a litigant has instituted vexatious proceedings, in Bryfogle at para. 41 (S.C.) and para. 12 (C.A.), the Courts held that evidence that a person has engaged in similar vexatious litigation in another jurisdiction is admissible to assist in inferring whether the persistence in instituting legal proceedings in this jurisdiction is likely to continue. Similarly, in my view, evidence of proceedings in the Court of Appeal may be admissible for the same limited purpose.
- [87] In addition to the authority found in s. 18, the Court has the inherent jurisdiction to control abuse of its process: Gichuru v. Pallai, 2018 BCCA 78 at paras. 74-78 [Gichuru#2]; Household Trust Co. v. Golden Horse Farms Inc. (1992), 65 B.C.L.R. (2d) 355 (C.A.) at pp. 361-362. One of the orders the Court may make to control abuse of its process, is that the vexatious litigant cannot institute any legal proceedings, without leave of the court, until the litigant has paid all outstanding costs orders: Gichuru#2 at paras. 81-83; Unrau v. National Dental Examining Board, 2019 ABQB 283 [Unrau] at paras. 828-835.
- [88] I now turn to the findings of fact and analysis.
- [89] I have considered only two aspects of the criminal proceedings, and those are: (a) Ms. Yang's conduct after Schultes J.'s strong warning that her appeals of interlocutory orders would be dismissed and she was wasting resources; and (b) her subsequent conduct seeking costs against the Crown. Ms. Yang brought several applications within the prosecution before the charge was stayed, but she has a right of full answer and defence. Ms. Yang believes her applications were a factor in the charge being stayed. Considering this right, and in the absence of evidence surrounding those applications and the initiation of the appeals, I do not draw any inference against Ms. Yang for bringing them. However, in my view, her conduct in continuing with the appeals and ordering and filing transcripts after she was warned by Schultes J., and then seeking costs against the Crown despite this warning, is relevant in drawing conclusions of whether her conduct in the civil proceedings against Ms. Shi and the District is likely to continue.

- [90] I find there is nothing vexatious in Ms. Yang's initiation of the two civil actions. The action against Ms. Shi has been decided and is subject to appeal. The action against the District has not yet gone to trial. Without making any determination of the merits of the action against the District, there is nothing in the pleadings that would indicate it is bound to fail. There is no evidence that Ms. Yang commenced the two civil actions for an improper purpose. She feels she was wronged, and she has pleaded recognized causes of action.
- [91] However, I find that following the initiation of the actions, Ms. Yang has habitually and persistently brought legal proceedings in the form of interlocutory applications, judicial review petitions, and appeals to the Supreme Court, which are vexatious. I make this finding for the following reasons:

Repeated Applications for the Same or Similar Orders

- [92] Ms. Yang has made repeated applications for orders that have already been denied. I do not include those applications: which were repeated because they were not addressed at previous hearings; or where Ms. Yang was given leave to file further applications. I refer only to applications that were adjudicated upon, and where Ms. Yang did not accept the order, so brought the application again. For example, Ms. Yang argues that she was given permission by Judge Harris to file a new application, so her further application was not a repeat application. She is correct, but only to the extent that the application was then heard by Judge Bakan and dismissed. Subsequent to that, Ms. Yang brought repeated applications or variations on that application for orders: that her husband and daughter could attend the trial other than in person; she not be required to have a certified court interpreter present; and that parts of the counterclaim by Ms. Shi be dismissed.

Refusal to Heed the Comments of Judges regarding Lack of Merit

- [93] In the action against the District and the Police Officers, Judge Challenger told Ms. Yang that her action against the Police Officers in their personal capacity would not be successful and she could recover damages against the District if she established her allegations against the Police Officers. On the second hearing of the defendants' application, Judge Bond gave the same explanation to Ms. Yang. Neither of these judicial comments had any effect on Ms. Yang. She sought a second judicial review, now of Judge Bond's order. It is not vexatious in itself to seek a judicial review or appeal. What is vexatious is Ms. Yang's persistence after judges explained to her why she could not succeed and that there was no purpose to her conduct because if the Police Officers were found to have breached a duty to her, she could still recover from the District which had admitted statutory liability for the Police Officers. Despite the clear exhortations by judges that Ms. Yang not pursue such action, she persisted to do so.

- [94] Ms. Yang's conduct in the Court of Appeal indicates that her conduct in the Provincial Court and Supreme Court will likely continue. Despite the above comments from judges, Ms. Yang appealed Duncan J.'s order dismissing the second judicial review. When Fenlon J.A. stayed the appeal pending the posting of security, she noted that Ms. Yang had not established sufficient merit to avoid an order for security. Despite this finding, Ms. Yang sought to vary Fenlon J.A.'s order.
- [95] In the criminal proceedings, Ms. Yang refused to heed Schultes J.'s comments that it was a "pointless waste of money" for her to file repeated appeals of interlocutory orders in the criminal proceedings. Despite this, Ms. Yang persisted in the appeals. When Ms. Yang appealed Duncan J.'s order dismissing her application to have the Crown pay her costs, Frankel J.A. noted that his efforts to explain to Ms. Yang why he considered her proposed appeal to be hopeless were unsuccessful. Despite this, Ms. Yang sought leave to appeal to the Supreme Court of Canada.

Judicial Reviews, Appeals, or Requests for Reviews of Almost Every Decision Made against Her

- [96] In the civil actions, Ms. Yang has filed petitions for judicial review, appeals, or requests for rehearing of almost every decision against her wishes. Ms. Yang's conduct shows a pattern of blindly filing judicial reviews or appeals, without consideration of the cost to the courts or other parties, or the merit of those proceedings. Of those proceedings that have been heard, Ms. Yang was successful only in one, being the review of Judge Challenger's decision concerning the Police Officers, however the subsequent re-hearing of the application resulted in dismissal of the action against the Police Officers, and a judicial review of that decision was dismissed. I will give two other examples. There appears to be no useful purpose to the judicial review of Judge Bond's order dismissing Ms. Yang's application to "seal and transfer" the Provincial Court file. Similarly, there is no useful purpose to Ms. Yang's repeated applications and judicial review of Judge Bakan's order that the determination of whether certain evidence could be admitted at trial, is a decision for the trial judge to make.
- [97] Again, Ms. Yang's conduct in the Court of Appeal indicates that this type of vexatious behavior will likely continue in the Provincial Court and Supreme Court. In the action against Ms. Shi, Ms. Yang has attempted to appeal the \$1,000 costs order of Jackson J., something which will take more than \$1,000 in time and money to appeal.

Attempts to Shield Herself from any Liability for Costs, and Failure to Pay Costs

- [98] Ms. Yang has brought orders for indigent status and waiver of court fees in every petition and appeal in the Supreme Court, and so the cost to her of filing these proceedings is nil and does not act as a restraint. In every petition, she has sought orders for increased or special costs, and also orders that she be "exempted" from any costs claimed by the defendants. In the application before Judge Brownstone in December 2018, between the adjourned trial

dates, Ms. Yang sought an order that she be exempt from any costs claimed by Ms. Shi. Ms. Yang also attempted to avoid the cost consequences of her appeals in the criminal proceedings by seeking costs payable by the Crown despite Schultes J.'s comments.

- [99] Ms. Yang states she has no money. However, without any employment, she manages to pay for living expenses and make claims of over \$35,000 in pecuniary damages against Ms. Shi. After her tenancy at Ms. Shi's home ended, she and her daughter lived in hotels for one month. She has managed to pay for transcripts, interpreters, translations, parking and copying fees. During the time these present applications have been pending, she has travelled to China twice. She advises that she borrows from her family and is in debt to them. Her husband works in China. She states her daughter attends university in the U.S. at a large cost. I note that in the one affidavit filed in support of indigent status that was in the materials filed on this application, Ms. Yang swore that: no one contributes to her household expenses; she has no income from any source; she has only \$100 cash in assets; and has \$1,700 in monthly expenses.
- [100] In her reasons of October 8, 2019 on the application of the Police Officers for security for costs, Fenlon J.A. stated:
- [20] It is apparent that Ms. Yang is receiving significant support from her family - whether as a loan or a gift is not entirely clear on the record before me. That source appears to cover both Ms. Yang's living expenses and the costs associated with her pursuit of multiple court proceedings.
- [21] Ms. Yang acknowledges that if the District is to be able to recover costs against her, she must win her appeal against the landlord. I find, in these circumstances, there is a serious question as to whether the District would be able to recover at the end of the day.
- [101] Despite the ability to obtain funds sufficient to live and incur expenses when it is in her interests to do so, Ms. Yang has not paid to Ms. Shi the \$4,379.22 in costs assessed by Master Baker, nor the \$1,000 costs payable forthwith ordered by Jackson J. These are payable now. The District and the Police Officers have presented two bills of cost totaling nearly \$16,000 arising from the judicial reviews. These are not currently payable because they have not yet been assessed but they will be payable once they are assessed.

Threats of Actions against Lawyers or Requests for Recusal by Judges

- [102] In the action against the District and the Police Officers, Ms. Yang filed an application for an order that Judge Challenger recuse herself from hearing any further proceedings. As the order record was not filed on this application, it is unclear what happened at that application. Ms. Yang again sought this order before Grauer J. who ordered that "the request" that Judge Challenger recuse herself was dismissed. Ms. Yang also brought an application that Judge Smith "quit" the action.

- [103] In the action against Ms. Shi, Ms. Yang brought an application for Judge Challenger to recuse herself, arguing that Judge Challenger had already made decisions in the criminal proceedings and in the action against the District and the Police Officers. Judge Challenger decided to recuse herself.
- [104] In the criminal proceedings, Frankel J.A notes that Ms. Yang indicated that she was considering an action against the Crown. This was despite that Donegan J. noted that the Crown's position was reasonable and, on the application before her, counsel's conduct was exemplary. There is no evidence that Ms. Yang commenced such an action, but the threat of one is sufficient.
- [105] In the midst of these applications, Ms. Yang sought leave to bring an, albeit unclearly defined, application against counsel who appeared on the applications. On subsequent hearing dates, one of the counsel had outside counsel also attend on the hearing.

Ms. Yang's Arguments

- [106] Ms. Yang made several arguments as to why her conduct has not been vexatious. The first is that she obtained a waiver of court fees for each proceeding. There is a merit component to the test to obtain a waiver of fees. The court may not grant the order if it considers that the claim: discloses no reasonable claim; is scandalous, frivolous or vexatious; or is otherwise an abuse of process of the court. There is no evidence that Ms. Yang disclosed to the Masters the full history of her conduct in these actions. Further, the considerations for a vexatious litigant order are broader.
- [107] Ms. Yang argues that any steps she has taken have been at the direction of registry staff or a legal aid lawyer, or pursuant to an order of the court permitting her to bring another application. She states that she is self-represented and tried to follow advice. I have not considered repeat applications pursuant to an order granting leave to bring such applications. While following advice may be relevant to intent, the test for vexatious conduct is not based on what advice she received.
- [108] Ms. Yang argues that she was successful in some applications. I agree. Not all of her applications were vexatious. For example, I do not find that there was anything vexatious in seeking orders for production of records, or for initially seeking an order that witnesses attend remotely. Some orders sought were likely a result of her lack of legal training. However, what was vexatious was the conduct that is discussed in the reasons above.
- [109] Ms. Yang argues she filed different petitions of the interlocutory orders because if she waited until after the trial was completed, she would have an unfair trial and the time limit for seeking judicial review would have expired. Each judicial review concerned a different order. She tried to save time and money by merging the various petitions. This does not address whether they were petitions that should have been brought to begin with, for example, petitions with no useful purpose.

- [110] Ms. Yang argues that the defendants initiated some of the applications. For example, the District applied to dismiss the claim against the Police Officers, which resulted in two judicial review petitions. I have not considered applications initiated by the defendants against Ms. Yang, but only the proceedings initiated by Ms. Yang.
- [111] Ms. Yang argues that all of her appeals and applications have merit and no judge has described the judicial reviews or appeals as vexatious. She argues none of her petitions and appeals are "doomed to fail". She states she cannot accept decisions that she feels are wrong. Of the substantive issues that have been decided, except for the first judicial review of Judge Challenger's decision, the judges so far have not shared Ms. Yang's conclusions regarding merit.
- [112] Finally, Ms. Yang states she is unable to pay the costs awards because she has no money. She also argues correctly that some of the costs awards have not been assessed and therefore are not currently payable. Ms. Yang states that an order that she pay costs now would prevent her from pursuing these actions. I have discussed above Ms. Yang's attempts to shield herself from costs, the evidence concerning her financial situation, and her ability to fund proceedings when it is in her interests to do so. I find there is a serious risk the defendants will be unable to recover their costs currently awarded and which may be awarded in the future if they are successful. I am also not persuaded, given the support Ms. Yang receives from her family, that an order for her to pay costs or security for costs, would necessarily prevent her from pursuing her various proceedings.
- [113] Ms. Yang states that if she is successful in the appeal of her action against Ms. Shi or if she is successful against the District, she will have funds to pay costs. I do not find this persuasive. She has already been largely unsuccessful in the action against Ms. Shi, and owes Ms. Shi substantial costs. The action against the District has not yet gone to trial, but even if Ms. Yang is successful, there are already costs awards in favour of the Police Officers which are presented at nearly \$16,000 (unassessed) to be set off against any award in her favour. Further, Ms. Yang has sought orders in every petition, and mid-way through the trial against Ms. Shi, to insulate herself from any order for costs. In my view, this indicates Ms. Yang has little, if any, intention of paying any costs award made against her.

Conclusions

- [114] I find that the defendants have established that Ms. Yang has "habitually, persistently and without reasonable grounds" instituted legal proceedings in the Provincial Court and Supreme Court. Ms. Yang has shown no restraint in her conduct and has consumed the resources of the defendants and courts, without any apparent consideration of costs to others, merits, or purpose of her proceedings. It is objectively unreasonable and vexatious conduct. While parties have a right to have legitimate disputes heard and determined, the resources of the other parties and the courts are not limitless. Both civil actions were started in the Provincial Court. Section 2(1) of the Small Claims Act states that the "purpose of this Act and the rules is to allow people who bring claims to the Provincial Court to have

them resolved in a just, speedy, inexpensive and simple manner". Ms. Yang's conduct has resulted in these proceedings being unreasonably expensive, lengthy and complicated. I have considered that Ms. Yang is self-represented and some her legal proceedings may be a result of her own lack of understanding of the law, but even when judges have taken appropriate steps to assist her, she does not heed that advice.

- [115] Ms. Yang's conduct stemming out of the two civil actions alone is sufficient to meet the criteria in s. 18. Her conduct in the criminal proceedings and the Court of Appeal reinforces my conclusion that unless there is a gatekeeper process put in place, Ms. Yang will continue her blizzard of applications, petitions and appeals and in the Provincial Court and Supreme Court.
- [116] I also find that for the same reasons Ms. Yang's conduct is an abuse of the Court processes and engages the inherent jurisdiction of the Court to control that abuse through other remedies such as requiring that she not institute legal proceedings without leave of the court until she pays outstanding costs. In this regard, the defendants in both of these proceedings seek orders that:

All proceedings by Lihong Yang against the Applicant are stayed until all outstanding costs ordered to date against Lihong Yang in favour of the Applicant have been paid.

- [117] For a number of reasons, I have concluded I am unable to make the order in these broad terms. First, the case authorities cited to me by counsel (Gichuru#2 and Unrau) discuss similar orders, but they relate to future proceedings, just as s. 18 orders are prospective. The order in Gichuru#2 is that the plaintiff "cannot institute any legal proceedings in any registry in the British Columbia Supreme Court, without leave of that court, until he has paid in full all of the outstanding cost orders against him (including the costs of this appeal) as ordered by all courts in this province". See also the discussion in Unrau at paras. 828 to 835, which refers to ordering that costs be paid as a pre-condition of granting leave to file new proceedings.
- [118] The defendants refer to *World Wide Treasure Adventures Inc. v. Trivia Games Inc.* (1994), 56 C.P.R. (3d) 1 (B.C.S.C.), aff'd (1996), 64 C.P.R. (3d) 485 (B.C.C.A.) where the Court did make an order that the plaintiff was stayed from proceeding with a certain action until it had paid in full the outstanding costs in previous proceedings, and had posted security. The case is distinguishable. In that case, there was an analysis of a specific pleading pursuant to previous Rule 19(24), (now Rule 9-5(1)) which provides that a court may upon certain conditions and amongst other remedies, stay a proceeding. The Court found the pleadings were a repeated attempt to have a previous trial decision revisited, and the Court viewed the plaintiff's chance of success as "extremely marginal". The plaintiff was also a corporation which, for security for costs, has a less stringent test than for a natural person. In this case, the basis of the stay order sought by the defendants is not an analysis of each specific proceeding; it is that Ms. Yang's conduct has been and will continue to be vexatious, and therefore seeking an order preventing the institution of new proceedings.

- [119] Second, with respect to the order sought by the District and Police Officers, none of the orders for costs are currently payable because either, they have not yet been assessed, or they are not fixed and payable forthwith. Ms. Yang argues the unassessed costs are also not currently payable because they were not ordered to be paid forthwith. I do not agree. Grauer J.'s order states they are payable following the event of the Provincial Court action against the Police Officers. The event has taken place and the action against the Police Officers has been dismissed. Justice Duncan's order states the "respondents" shall have the cost of preparation for and attendance at the second petition. Ms. Yang argues that if the District is assuming liability for the Police Officers, the District cannot seek costs for the Police Officers now because there has not yet been a trial. I do not agree. The costs relate to the petition, not to the trial. Once the costs orders in favour of the Police Officers are assessed, then they are payable. The fact that they are not yet payable is fatal to the order sought by the District and Police Officers.
- [120] Third, this Court does not have jurisdiction to order a stay in the Court of Appeal (where in any event Ms. Yang's appeal against the Police Officers is already stayed) or in the Provincial Court (where Ms. Yang's trial against the District has yet to proceed). All of Ms. Yang's current proceedings against Ms. Shi are in the Supreme Court except her appeal of Jackson J.'s cost order, and again, this Court does not have jurisdiction to order a stay in the Court of Appeal.
- [121] Having said all this, given Ms. Yang's vexatious conduct and what I have found is little, if any, intention by Ms. Yang to pay the defendants' costs, I conclude it would be appropriate to make an order in accordance with that made by the Court of Appeal in Gichuru#2, that Ms. Yang cannot institute further legal proceedings, without leave of the court, until she has paid outstanding costs orders presently payable.

Security for Costs

- [122] Only Ms. Shi brings an application for security for costs, and only with respect to this proceeding No. 196216. She seeks an order that:

Lihong Yang pay security for costs into court in the amount of \$ [] for this file, BC Supreme Court Vancouver Registry S-196216, which is stayed until such security has been paid.

- [123] Appeal No. 196216 also includes judicial review petitions No. 190263 and No. 193620 as those were subsequently "merged" into and ordered to be heard at the same time as the appeal.
- [124] The Court has inherent jurisdiction to order that a natural person who is a plaintiff post security for costs: *Han v. Cho*, 2008 BCSC 1229 [Han] at para. 12. A defendant seeking an order that a plaintiff post security for costs must show a prima facie case that the defendant will be unable to recover costs if the action fails. If this threshold is established, the Court's discretion is engaged to consider in the circumstances whether to grant such an order: *Gichuru v. Pallai*, 2014 BCSC 1920 [Gichuru#1] at para. 7. An order for security for costs

against a natural person should be granted cautiously and only in exceptional circumstances. Poverty in itself is not sufficient. Exceptional circumstances may include a failure to pay costs previously ordered, or a refusal to follow a court order, or a weak claim: Han at paras. 14, 21 and 27.

- [125] For the reasons discussed above, I find that Ms. Shi has established a *prima facie* case that she will be unable to recover any costs in her favour, and that an award for security for costs would not necessarily bar Ms. Shi from proceeding with her appeal. The costs presently payable are \$5,379.22, and Ms. Shi estimates her costs of the judicial reviews and appeals in this proceeding to be in excess of \$8,000. Ms. Yang has filed a 44 page statement of argument for her appeal. It appears largely to be a disagreement with Judge Brownstone's findings of fact. Considering Ms. Yang's vexatious conduct, her failure to pay costs, and what will likely be a difficult appeal and judicial reviews, I find Ms. Shi has established exceptional circumstances to justify an award for security of costs.
- [126] Pursuant to s. 8 of the Small Claims Act, a person seeking to appeal a trial judgment of the Provincial Court must pay security for costs of \$200 plus the amount of the judgment, at the time of filing the notice of appeal. Ms. Yang filed a without notice application to waive the \$200 security for costs required. She obtained an order that states that no fee is payable under Schedule 1 of Appendix C of the Supreme Court Rules, expiring on May 30, 2020 with liberty to re-apply. Counsel for Ms. Shi accepts this was a waiver of the \$200 security required. Section 8 provides that the Supreme Court may reduce the amount of security required, but it does not state that it may increase it. Assuming, without deciding, that this section may limit the authority of the Court to order security for costs above what s. 8 requires, I find that there is no impediment to the Court ordering security for costs for the hearing of the proceeding because the judicial review petitions have now been merged with that appeal. Section 8 applies only to appeals of trial judgments. The Court has jurisdiction to order security for costs of the judicial reviews.
- [127] Ms. Yang argues that her appeal is in the last stage and Ms. Shi has delayed in bringing the application, and should have brought the application immediately before Ms. Yang incurred costs. I do not agree. This application was filed a year ago, and the delay has been a result of Ms. Yang's applications for adjournments and the COVID-19 pandemic. Further, there is no evidence of when exactly Ms. Yang ordered transcripts, but the evidence establishes that immediately after the first part of the trial, Ms. Yang challenged the accuracy of the interpretation by the interpreters. Further, the appeal is not in the last stage. Ms. Shi has yet to file a response to the statement of argument, and had originally sought an order to strike Ms. Shi's statement of argument in this application alleging it was prolix and unintelligible. That portion of the application was adjourned in the interests of time.

[128] Considering all of the above, and estimating the costs of a half-day hearing of the petitions, I order that Ms. Yang post security for costs of \$2,000 in total in proceeding No. 196216. Until that amount is paid, the proceeding in its entirety, including the merged petitions No. 190263 and No. 193620, is stayed.

Orders

[129] I make the following orders:

- a) a declaration that Ms. Lihong Yang is a vexatious litigant;
- b) Ms. Lihong Yang must not institute any legal proceedings (including any petitions for judicial review, or appeals to the Supreme Court, in any existing legal proceedings in the Provincial Court or Supreme Court), without leave of the court, until she has paid in full all of the currently payable outstanding cost orders against her; for greater clarity, this order does not prevent the hearing of presently filed applications, petitions for judicial review, or appeals;
- c) Ms. Yang must post security for costs in proceeding No. 196216 in the amount of \$2,000, and until then proceeding No. 196216 (which includes petition No. 1910630 and petition No. 1911988), is stayed; and
- d) the defendants' applications for an order of stays of all proceedings in all courts until outstanding court orders for costs are paid, is dismissed.

Costs of these Applications

[130] The defendants agreed to adjourn the issue of the costs of the hearings of these applications. They are at liberty to reset that aspect of their applications by making arrangements through Supreme Court Scheduling.

"Norell J."

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