COURT FILE NUMBER	2490306611
COURT	ALBERTA COURT OF JUSTICE (CIVIL)
JUDICIAL CENTRE	EDMONTON
PLAINTIFF/RESPONDENT	TIMOTHY KOHUT
DEFENDANTS/APPLICANTS	KEVIN KUMAR, COLTON KUMAR, and 1304139 B.C. LTD.

Clerk's Stamp

COURT FILE NUMBER	2490306619
COURT	ALBERTA COURT OF JUSTICE (CIVIL)
JUDICIAL CENTRE	EDMONTON
PLAINTIFF/RESPONDENT	TERRY KERSLAKE
DEFENDANTS/APPLICANTS	KEVIN KUMAR, COLTON KUMAR, and 1304139 B.C. LTD.
DOCUMENT	**BOOK OF AUTHORITIES**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT

McDonald Paralegal Services Ltd.
7203 – 25th Street SE
Calgary, AB T2C 0Z9
E: serve@mcdonaldparalegal.ca

Table of Authorities

William Steward Arnold Martin *Appellant*

v.

William Hamilton Gray, administrator with will annexed of the estate of John Edwin MacDonald *Respondent*

INDEXED AS: MACDONALD ESTATE *v.* MARTIN

File No.: 21469.

1990: May 4; 1990: May 10*.

Present: Dickson C.J.** and Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier and Cory JJ.

ON APPEAL FROM THE COURT OF APPEAL FOR MANITOBA

Barristers and solicitors — Conflict of interest — Former junior solicitor for appellant joining law firm acting for respondent — Whether law firm may continue to act as solicitors of record for respondent — Test to be applied in determining whether disqualifying conflict of interest exists.

Respondent brought an action against appellant for an accounting. Appellant's solicitor was assisted by a junior member of his firm who was actively engaged in the case and was privy to many confidences disclosed by appellant to his solicitor. The junior member later joined the law firm which represents respondent in this action. Appellant applied to the provincial superior court for a declaration that the law firm was ineligible to continue to act as solicitors of record for respondent. The court granted the application and ordered the firm removed as solicitors of record. The Court of Appeal reversed that decision. This appeal is to determine the appropriate standard to be applied in deciding whether a law firm should be disqualified from continuing to act in the litigation by reason of a conflict of interest.

Held: The appeal should be allowed.

Per Dickson C.J. and La Forest, Sopinka and Gonthier JJ.: In determining whether a disqualifying conflict of interest exists, the Court is concerned with three competing values: (1) the concern to maintain the high standards of the legal profession and the integrity of our system of justice; (2) the countervailing value that a litigant should not be deprived of his or her choice of counsel without good cause; and (3) the desirability of permitting reasonable mobility in the legal profession. The "probability of mischief" standard, which is the

* Reasons delivered December 20, 1990.

** Chief Justice at the time of hearing.

William Steward Arnold Martin *Appelant*

c.

William Hamilton Gray, administrateur testamentaire de la succession de John Edwin MacDonald *Intimé*

RÉPERTORIÉ: SUCCESSION MACDONALD *c.* MARTIN

N° du greffe: 21469.

1990: 4 mai; 1990: 10 mai *.

Présents: Le juge en chef Dickson** et les juges Wilson, La Forest, L'Heureux-Dubé, Sopinka, Gonthier et Cory.

EN APPEL DE LA COUR D'APPEL DU MANITOBA

Avocats et procureurs — Conflits d'intérêts — Entrée d'un avocat junior ayant agi pour l'appelant dans un cabinet agissant pour l'intimé — Le cabinet peut-il continuer à occuper pour l'intimé? — Critère à appliquer pour décider s'il existe un conflit d'intérêts rendant le cabinet inhabile.

L'intimé a intenté une action en reddition de compte contre l'appelant. Le procureur de l'appelant s'est fait seconder par une avocate junior de son cabinet qui s'est occupée activement du dossier et a été mise dans le secret de bien des confidences faites par l'appelant à son procureur. Cette dernière s'est jointe par la suite au cabinet qui occupe pour l'intimé dans la présente action. L'appelant a demandé à la cour supérieure provinciale de déclarer le cabinet inhabile à continuer d'occuper pour l'intimé. La cour a fait droit à la demande et ordonné que l'inscription du cabinet au dossier soit rayée. La Cour d'appel a infirmé cette décision. Le présent pourvoi vise à déterminer la norme à appliquer pour décider si un cabinet doit être déclaré inhabile à continuer d'occuper pour son client dans l'action pour raison de conflit d'intérêts.

Arrêt: Le pourvoi est accueilli.

Le juge en chef Dickson et les juges La Forest, Sopinka et Gonthier: Pour décider s'il existe un conflit d'intérêts entraînant une inhabilité, la Cour doit prendre en considération trois valeurs en même temps: 1) le souci de préserver les normes exigeantes de la profession d'avocat et l'intégrité de notre système judiciaire; 2) en contrepoids, le droit du justiciable de ne pas être privé sans raison valable de son droit de retenir les services de l'avocat de son choix; 3) la mobilité raisonnable qu'il est souhaitable de permettre au sein de la profession. La

* Motifs rendus le 20 décembre 1990.

** Juge en chef au moment de l'audience.

traditional English test, is not sufficiently high to satisfy the public requirement that there be an appearance of justice. The use of confidential information is a matter usually not susceptible of proof, and the test must therefore be such that the public represented by the reasonably informed person would be satisfied that no use of confidential information would occur. Two questions must be answered: (1) Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client? In answering the first question American courts have adopted the "substantial relationship" test: once it is established that there is a "substantial relationship" between the matter out of which the confidential information is said to arise and the matter at hand, there is an irrebuttable presumption that confidential information was imparted to the lawyer. This test is too rigid, however. Rather, once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. The degree of satisfaction must withstand the scrutiny of the reasonably informed member of the public. This will be a difficult burden to discharge.

In answering the second question, whether the confidential information will be misused, a lawyer who has relevant confidential information is automatically disqualified from acting against a client or former client. With respect to the partners or associates in the firm, the concept of imputed knowledge is unrealistic in the era of the mega-firm. The court should therefore draw the inference that lawyers who work together share confidences, unless satisfied on the basis of clear and convincing evidence, that all reasonable measures have been taken to ensure that no disclosure will occur by the "tainted" lawyer to the member or members of the firm who are engaged against the former client. Such reasonable measures would include institutional mechanisms such as Chinese Walls and cones of silence. Until the governing bodies of the legal profession have approved of these and adopted rules with respect to their operation, it is unlikely that a court would accept them as evidence of effective screening. Undertakings and conclusory statements in affidavits are not sufficient, since affidavits of lawyers are difficult to verify objectively and the public is not likely to be satisfied without some

«probabilité de préjudice», qui est le critère anglais traditionnel, n'est pas une norme assez exigeante pour assurer à la justice ce caractère apparent que le public exige d'elle. L'utilisation de renseignements confidentiels est habituellement impossible à prouver et le critère retenu doit donc tendre à convaincre le public, c'est-à-dire une personne raisonnablement informée, qu'il ne sera fait aucun usage de renseignements confidentiels. Il faut répondre à deux questions: 1) L'avocat a-t-il appris, grâce à des rapports antérieurs d'avocat à client, des faits confidentiels relatifs à l'objet du litige? 2) Y a-t-il un risque que ces renseignements soient utilisés au détriment du client? Les tribunaux américains ont répondu à la première question en appliquant le critère du «lien important»: dès qu'il est établi qu'il y a un «lien important» entre la question qui serait à l'origine du renseignement confidentiel et la question en litige, il existe une présomption irréfragable selon laquelle l'avocat a appris des faits confidentiels. Ce critère est cependant trop rigide. Il convient plutôt de dire que, dès que le client a prouvé l'existence d'un lien antérieur dont la connexité avec le mandat dont on veut priver l'avocat est suffisante, un tribunal doit en inférer que des renseignements confidentiels ont été transmis, sauf si l'avocat convainc le tribunal qu'aucun renseignement pertinent n'a été communiqué. La conviction doit être telle qu'un membre du public raisonnablement informé en serait également persuadé. Il sera difficile de s'acquitter du fardeau de la preuve.

Pour répondre à la deuxième question, savoir le mauvais usage qui pourrait être fait des renseignements confidentiels, un avocat qui a appris des faits confidentiels pertinents ne peut pas agir contre un client ou un ancien client. En ce qui concerne les associés d'un cabinet, le concept de connaissance présumée est irréaliste à l'ère des mégacabinets. Un tribunal doit donc tirer la conclusion que les avocats qui travaillent ensemble échangent des renseignements confidentiels, sauf s'il est persuadé, par des preuves claires et convaincantes, que toutes les mesures raisonnables ont été prises pour veiller à ce que l'avocat en cause ne divulgue rien aux membres du cabinet qui agissent contre son ancien client. Parmi ces mesures raisonnables, on pourrait compter des mécanismes institutionnels comme les murailles de Chine et les cônes de silence. Jusqu'à ce que les organes directeurs de la profession les aient approuvés et aient adopté les règles régissant leur fonctionnement, il est improbable qu'un tribunal les accepte comme preuve suffisante d'une protection efficace. Les engagements et affirmations catégoriques contenus dans des affidavits ne sont pas suffisants parce que les affidavits des avocats sont difficiles à vérifier objectivement et qu'il est peu probable que le public soit convaincu s'il n'a

additional guarantees that confidential information will under no circumstances be used.

In this case the lawyer actively worked on the very case in respect of which her new firm is acting against her former client, and she is therefore in possession of relevant confidential information. With respect to misuse of the information, there is nothing in the affidavits filed to indicate that any independently verifiable steps were taken by the firm to implement any kind of screening, and the firm may therefore not continue to act.

Per Wilson, L'Heureux-Dubé and Cory JJ.: Where a lawyer who has had a substantial involvement with a client in an ongoing contentious matter joins another law firm which is acting for an opposing party, there is an irrebuttable presumption that the knowledge of such lawyer, including confidential information disclosed to him or her by the former client, has become the knowledge of the new firm. Such an irrebuttable presumption is essential to preserve public confidence in the administration of justice.

Neither the merger of law firms nor the mobility of lawyers can be permitted to affect adversely the public's confidence in the judicial system. At this time, when the work of the courts is having a very significant impact upon the lives and affairs of all Canadians, it is fundamentally important that justice not only be done, but appear to be done in the eyes of the public. While the necessity of selecting new counsel will certainly be inconvenient and worrisome to clients, and reasonable mobility may well be important to lawyers, the integrity of the judicial system is of such fundamental importance that it must be the predominant consideration. Our judicial system cannot function properly if doubt or suspicion exists in the mind of the public that the confidential information disclosed by a client to a lawyer might be revealed. No matter what form of restrictions were sought to be imposed on individual lawyers and law firms involved, the public would, quite properly, remain skeptical of their efficacy since lawyers in the same firm meet frequently and have numerous opportunities for the private exchange of confidential information.

Cases Cited

By Sopinka J.

Not followed: *Rakusen v. Ellis, Munday & Clarke*, [1912] 1 Ch. 831; **referred to:** *Morton v. Asper* (1987), 49 Man. R. (2d) 167, aff'd (1987), 51 Man. R. (2d) 207; *Law Society of Manitoba v. Giesbrecht* (1983), 24

d'autres garanties que les renseignements confidentiels ne seront jamais utilisés.

En l'espèce, l'avocate a travaillé activement au dossier à l'égard duquel le nouveau cabinet qui l'emploie agit contre son ancien client et elle a donc appris des faits confidentiels pertinents. Quant au mauvais usage des renseignements, les affidavits n'indiquent nullement que le cabinet ait pris des mesures vérifiables de façon indépendante pour mettre en œuvre quelque mécanisme de protection que ce soit et le cabinet ne peut donc continuer d'agir.

Les juges Wilson, L'Heureux-Dubé et Cory: Quand un avocat, qui s'est engagé substantiellement auprès d'un client dans une affaire contentieuse en cours, se joint à un autre cabinet qui occupe pour une partie adverse, il existe une présomption irréfragable que ce qui est connu de cet avocat, y compris les renseignements confidentiels que lui a confiés l'ancien client, est désormais connu du nouveau cabinet. Une telle présomption irréfragable est essentielle pour préserver la confiance du public dans l'administration de la justice.

On ne saurait permettre que la fusion des cabinets d'avocats, ou la mobilité au sein de la profession, viennent entamer la confiance du public dans le système judiciaire. À l'époque actuelle, le travail des tribunaux a des répercussions très importantes sur la vie et les activités de tous les Canadiens. Il est donc fondamentalement important qu'aux yeux du public, la justice soit non seulement rendue, mais qu'il soit évident qu'elle est rendue. Bien que la nécessité de choisir un autre avocat cause certainement des inconvénients et des soucis au client et que la mobilité professionnelle puisse être jugée importante par les avocats, l'intégrité du système judiciaire revêt une importance tellement fondamentale qu'elle doit être tenue pour le facteur décisif. Notre système judiciaire ne peut pas fonctionner normalement si le public se demande si les renseignements confidentiels communiqués par un client à un avocat seront divulgués ou s'il soupçonne qu'ils pourraient l'être. Peu importe les limites que l'on aurait cherché à imposer aux avocats et aux cabinets en cause, le public, à juste titre, resterait sceptique à leur endroit, puisque les avocats au sein d'un cabinet se rencontrent souvent et ont fréquemment la possibilité d'échanger des renseignements confidentiels.

Jurisprudence

Citée par le juge Sopinka

Arrêt non suivi: *Rakusen v. Ellis, Munday & Clarke*, [1912] 1 Ch. 831; **arrêts mentionnés:** *Morton v. Asper* (1987), 49 Man. R. (2d) 167, conf. (1987), 51 Man. R. (2d) 207; *Law Society of Manitoba v. Giesbrecht*

Man. R. (2d) 228; *Re a Solicitor*, unreported, Chancery Division, March 31, 1987, summarized at 131 Sol. J. 1063; *T.C. Theatre Corp. v. Warner Bros. Pictures, Inc.*, 113 F. Supp. 265 (1953); *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562 (1973); *E. F. Hutton & Co. Inc. v. Brown*, 305 F. Supp. 371 (1969); *Nemours Foundation v. Gilbane, Aetna, Federal Ins. Co.*, 632 F. Supp. 418 (1986); *U.S.A. for the Use and Benefit of Lord Electric Co. v. Titan Pacific Construction Corp.*, 637 F. Supp. 1556 (1986); *In re Asbestos Cases*, 514 F. Supp. 914 (1981); *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263 (1983); *Novo Terapeutisk Laboratorium A/S v. Baxter Travenol Laboratories, Inc.*, 607 F.2d 186 (1955); *Akerly v. Red Barn System, Inc.*, 551 F.2d 539 (1977); *Gas-A-Tron of Arizona v. Union Oil Co. of California*, 534 F.2d 1322, *certiorari* denied, 429 U.S. 861 (1976); *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp.*, 518 F.2d 751 (1975); *Laskey Bros. of W. Va., Inc. v. Warner Bros. Pictures*, 224 F.2d 824 (1955), *certiorari* denied, 350 U.S. 932 (1956); *City of Cleveland v. Cleveland Electric Illuminating Co.*, 440 F. Supp. 193 (1977), aff'd mem., 573 F.2d 1310, *certiorari* denied, 435 U.S. 996 (1977); *Fleischer v. A.A.P., Inc.*, 163 F. Supp. 548 (1958); *D & J Constructions Pty. Ltd. v. Head* (1987), 9 N.S.W.L.R. 118; *National Mutual Holdings Pty. Ltd. v. Sentry Corp.* (1989), 87 A.L.R. 539; *In the Marriage of Thevanaz* (1986), 11 Fam. L.R. 95; *Re the Marriage of R.P. and A.A. Gagliano* (1989), 12 Fam. L.R. 843; *Steed & Evans Ltd. v. MacTavish* (1976), 12 O.R. (2d) 236; *Canada Southern Railway Co. v. Kingsmill, Jennings* (1978), 8 C.P.C. 117; *Falls v. Falls* (1979), 12 C.P.C. 270; *Goldberg v. Goldberg* (1982), 141 D.L.R. (3d) 133; *Lukic v. Urquhart* (1984), 11 D.L.R. (4th) 638, aff'd in part (1985), 15 D.L.R. (4th) 639; *O'Dea v. O'Dea* (1987), 68 Nfld. & P.E.I.R. 67; *Fisher v. Fisher* (1986), 76 N.S.R. (2d) 326; *Thomson v. Smith Mechanical Inc.*, [1985] C.S. 782; *Canada v. Consortium Designers Inc.* (1988), 72 Nfld. & P.E.I.R. 255, aff'd (1989), 80 Nfld. & P.E.I.R. 12; *Farmers Mutual Petroleums Ltd. v. United States Smelting, Refining & Mining Co.* (1961), 28 D.L.R. (2d) 618; *R. v. Burkinshaw* (1967), 60 D.L.R. (2d) 748; *Devco Properties Ltd. v. Sunderland*, [1977] 2 W.W.R. 664; *Mercator Enterprises Ltd. v. Mainland Investments Ltd.* (1978), 29 N.S.R. (2d) 703; *Christo v. Bevan* (1982), 36 O.R. (2d) 797; *Schmeichel v. Saskatchewan Mining Development Corp.*, [1983] 5 W.W.R. 151; *International Electronics Corp. v. Woodside Developments Ltd.*, unreported, British Columbia Supreme Court, June 26, 1985; *Davey v. Woolley, Hames, Dale & Dingwall* (1982), 35 O.R. (2d) 599; *United States Surgical Corp. v. Downs Surgical Canada Ltd.* (1982), 141 D.L.R. (3d) 157.

(1983), 24 Man. R. (2d) 228; *Re a Solicitor*, inédit, Chancery Division, 31 mars 1987, résumé à 131 Sol. J. 1063; *T.C. Theatre Corp. v. Warner Bros. Pictures, Inc.*, 113 F. Supp. 265 (1953); *Emle Industries, Inc. v. Patentex, Inc.*, 478 F.2d 562 (1973); *E. F. Hutton & Co. Inc. v. Brown*, 305 F. Supp. 371 (1969); *Nemours Foundation v. Gilbane, Aetna, Federal Ins. Co.*, 632 F. Supp. 418 (1986); *U.S.A. for the Use and Benefit of Lord Electric Co. v. Titan Pacific Construction Corp.*, 637 F. Supp. 1556 (1986); *In re Asbestos Cases*, 514 F. Supp. 914 (1981); *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263 (1983); *Novo Terapeutisk Laboratorium A/S v. Baxter Travenol Laboratories, Inc.*, 607 F.2d 186 (1955); *Akerly v. Red Barn System, Inc.*, 551 F.2d 539 (1977); *Gas-A-Tron of Arizona v. Union Oil Co. of California*, 534 F.2d 1322, *certiorari* refusé, 429 U.S. 861 (1976); *Silver Chrysler Plymouth, Inc. v. Chrysler Motors Corp.*, 518 F.2d 751 (1975); *Laskey Bros. of W. Va., Inc. v. Warner Bros. Pictures*, 224 F.2d 824 (1955), *certiorari* refusé, 350 U.S. 932 (1956); *City of Cleveland v. Cleveland Electric Illuminating Co.*, 440 F. Supp. 193 (1977), conf. mem., 573 F.2d 1310, *certiorari* refusé, 435 U.S. 996 (1977); *Fleischer v. A.A.P., Inc.*, 163 F. Supp. 548 (1958); *D & J Constructions Pty. Ltd. v. Head* (1987), 9 N.S.W.L.R. 118; *National Mutual Holdings Pty. Ltd. v. Sentry Corp.* (1989), 87 A.L.R. 539; *In the Marriage of Thevanaz* (1986), 11 Fam. L.R. 95; *Re the Marriage of R.P. and A.A. Gagliano* (1989), 12 Fam. L.R. 843; *Steed & Evans Ltd. v. MacTavish* (1976), 12 O.R. (2d) 236; *Canada Southern Railway Co. v. Kingsmill, Jennings* (1978), 8 C.P.C. 117; *Falls v. Falls* (1979), 12 C.P.C. 270; *Goldberg v. Goldberg* (1982), 141 D.L.R. (3d) 133; *Lukic v. Urquhart* (1984), 11 D.L.R. (4th) 638, conf. en partie (1985), 15 D.L.R. (4th) 639; *O'Dea v. O'Dea* (1987), 68 Nfld. & P.E.I.R. 67; *Fisher v. Fisher* (1986), 76 N.S.R. (2d) 326; *Thomson c. Smith Mechanical Inc.*, [1985] C.S. 782; *Canada v. Consortium Designers Inc.* (1988), 72 Nfld. & P.E.I.R. 255, conf. (1989), 80 Nfld. & P.E.I.R. 12; *Farmers Mutual Petroleums Ltd. v. United States Smelting, Refining & Mining Co.* (1961), 28 D.L.R. (2d) 618; *R. v. Burkinshaw* (1967), 60 D.L.R. (2d) 748; *Devco Properties Ltd. v. Sunderland*, [1977] 2 W.W.R. 664; *Mercator Enterprises Ltd. v. Mainland Investments Ltd.* (1978), 29 N.S.R. (2d) 703; *Christo v. Bevan* (1982), 36 O.R. (2d) 797; *Schmeichel v. Saskatchewan Mining Development Corp.*, [1983] 5 W.W.R. 151; *International Electronics Corp. v. Woodside Developments Ltd.*, inédit, Cour suprême de la Colombie-Britannique, 26 juin 1985; *Davey v. Woolley, Hames, Dale & Dingwall* (1982), 35 O.R. (2d) 599; *United States Surgical Corp. v. Downs Surgical Canada Ltd.* (1982), 141 D.L.R. (3d) 157.

By Cory J.

Followed: *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263 (1983).

Authors Cited

Canadian Bar Association. *Code of Professional Conduct*. Adopted August 25, 1974.

Dean, Miriam R. and Christopher F. Finlayson. "Conflicts of interest: When may a lawyer act against a former client?", [1990] *N.Z.L.J.* 43.

"Developments in the Law—Conflicts of Interest in the Legal Profession" (1981), 94 *Harv. L. Rev.* 1247.

Kryworuk, Peter William. "Acting Against Former Clients—A Matter of Dollars and Common Sense" (1985), 45 *C.P.C.* 1.

Steele, Graham. "Imputing Knowledge From One Member of a Firm to Another: 'Lead Us Not Into Temptation' " (1990), 12 *Adv. Q.* 46.

APPEAL from a judgment of the Manitoba Court of Appeal (1989), 57 Man. R. (2d) 161, 58 D.L.R. (4th) 67, [1989] 3 W.W.R. 653, reversing the judgment of the Court of Queen's Bench granting a declaration that a firm of lawyers was ineligible to continue to act as solicitors of record for the respondent and removing the firm as solicitors of record. Appeal allowed.

R. A. Dewar and *R. A. Watchman*, for the appellant.

A. D. MacInnes, Q.C., for the respondent.

The judgment of Dickson C.J. and La Forest, Sopinka and Gonthier JJ. was delivered by

SOPINKA J.—This appeal is concerned with the standard to be applied in the legal profession in determining what constitutes a disqualifying conflict of interest. The issue arose in the context of a lawsuit in which a former junior solicitor for the appellant transferred her employment to the law firm acting for the respondent.

Facts

The respondent, Gray, is the plaintiff in an action for an accounting against the appellant and Rossmere Holdings. In 1983, the appellant retained the services of A. Kerr Twaddle, Q.C.,

Citée par le juge Cory

Arrêt suivi: *Analytica, Inc. v. NPD Research, Inc.*, 708 F.2d 1263 (1983).

Doctrine citée

Association du Barreau canadien. *Code de déontologie professionnelle*. Adopté le 25 août 1974.

Dean, Miriam R. and Christopher F. Finlayson. «Conflicts of interest: When may a lawyer act against a former client?», [1990] *N.Z.L.J.* 43.

«Developments in the Law—Conflicts of Interest in the Legal Profession» (1981), 94 *Harv. L. Rev.* 1247.

Kryworuk, Peter William. «Acting Against Former Clients—A Matter of Dollars and Common Sense» (1985), 45 *C.P.C.* 1.

Steele, Graham. «Imputing Knowledge From One Member of a Firm to Another: 'Lead Us Not Into Temptation'» (1990), 12 *Adv. Q.* 46.

POURVOI contre un arrêt de la Cour d'appel du Manitoba (1989), 57 Man. R. (2d) 161, 58 D.L.R. (4th) 67, [1989] 3 W.W.R. 653, qui a infirmé un jugement de la Cour du Banc de la Reine qui avait déclaré qu'un cabinet d'avocats était inhabile à continuer d'occuper pour l'intimé et avait rayé l'inscription du cabinet au dossier. Pourvoi accueilli.

R. A. Dewar et *R. A. Watchman*, pour l'appelant.

A. D. MacInnes, c.r., pour l'intimé.

Version française du jugement du juge en chef Dickson et des juges La Forest, Sopinka et Gonthier rendu par

LE JUGE SOPINKA—Ce pourvoi concerne la norme qui régit la conduite des avocats en matière de conflit d'intérêts. Il s'agit de déterminer dans quel cas l'avocat sera inhabile à occuper pour son client. La question s'est posée dans le contexte d'un procès au cours duquel une avocate junior représentant l'appelant a changé d'emploi et a été engagée par le cabinet d'avocats occupant pour l'intimé.

Les faits

L'intimé Gray était le demandeur dans une action en reddition de compte contre l'appelant et Rossmere Holdings. En 1983, l'appelant a retenu les services d'A. Kerr Twaddle, c.r., qui a exercé la

firm should be imputed to the rest of the firm. The strict application of the appearance principle has led some courts to apply it so that the presumption that "the knowledge of one is the knowledge of all" is irrebuttable. In this category are *Davey v. Woolley, Hames, Dale & Dingwall* (1982), 35 O.R. (2d) 599 (C.A.); *Fisher v. Fisher*, *supra*; and *Morton v. Asper*, *supra*. Other courts have allowed the principle to be rebutted: see *United States Surgical Corp. v. Downs Surgical Canada Ltd.* (1982), 141 D.L.R. (3d) 157 (F.C.T.D.), and *Law Society of Manitoba v. Giesbrecht*, *supra*. These cases are analyzed by Graham Steele in "Imputing Knowledge From One Member of a Firm to Another: 'Lead Us Not Into Temptation'" (1990), 12 *Adv. Q.* 46. He concludes, at p. 58:

> Some judges (and lawyers) find the rigid application of test (2) to be too hard on lawyers and law firms, particularly in today's climate of mergers and mega-firms. For the purpose of determining whether there is a conflict of interest, they would advocate what might be called a "rebuttable imputation" of a lawyer's knowledge.

The Appropriate Test

What then should be the correct approach? Is the "probability of mischief" standard sufficiently high to satisfy the public requirement that there be an appearance of justice? In my opinion, it is not. This is borne out by the judicial statements to which I have referred and to the desire of the legal profession for strict rules of professional conduct as its adoption of the Canadian Code of Professional Conduct demonstrates. The probability of mischief test is very much the same as the standard of proof in a civil case. We act on probabilities. This is the basis of *Rakusen*. I am, however, driven to the conclusion that the public, and indeed lawyers and judges, have found that standard wanting. In dealing with the question of the use of confidential information we are dealing with a matter that is usually not susceptible of proof. As pointed out by Fletcher Moulton L.J. in *Rakusen*, "that is a thing which you cannot prove" (p. 841). I would add "or disprove". If it were otherwise, then no doubt the public would be satisfied upon proof that no prejudice would be occasioned. Since, however, it is not susceptible of proof, the test must be such

renseignements confidentiels, que les autres en avaient eux aussi eu connaissance. L'application rigoureuse du critère de l'apparence a amené certains tribunaux à considérer qu'il s'agissait d'une présomption irréfragable. Rentrent dans cette catégorie les décisions *Davey v. Woolley, Hames, Dale & Dingwall* (1982), 35 O.R. (2d) 599 (C.A.); *Fisher v. Fisher* et *Morton v. Asper*, précitées. D'autres tribunaux ont tenu la présomption pour réfutable: voir *United States Surgical Corp. v. Downs Surgical Canada Ltd.* (1982), 141 D.L.R. (3d) 157 (D.P.I.C.F.) et *Law Society of Manitoba v. Giesbrecht*, précitée. Graham Steele analyse ces décisions dans un article: «Imputing Knowledge From One Member of a Firm to Another: 'Lead Us Not Into Temptation'» (1990), 12 *Adv. Q.* 46. Il conclut, à la p. 58:

> [TRADUCTION] Certains juges (et certains avocats) estiment que l'application rigide du critère (2) est trop sévère à l'endroit des avocats et des cabinets, surtout dans le contexte actuel des fusions et des mégacabinets. Ils préconisent, pour déterminer s'il y a un conflit d'intérêts, ce que l'on pourrait appeler la notion de l'«imputation réfutable» de ce qu'a appris un avocat.

Le critère à retenir

Quelle doit donc être la bonne approche? La norme de la «probabilité de préjudice» est-elle assez exigeante pour donner à la justice ce caractère apparent que le public exige d'elle? À mon sens, elle ne l'est pas; ce que confirment la jurisprudence que j'ai citée et le désir de la profession juridique d'avoir des règles strictes de déontologie, comme le démontre l'adoption du Code canadien de déontologie professionnelle. Le critère de la probabilité de préjudice correspond essentiellement à la norme de preuve en matière civile. Nous nous en tenons aux probabilités, tel est le fondement de l'arrêt *Rakusen*. Force m'est cependant de conclure que le public, et même les avocats et les juges, ont jugé cette norme insuffisante. L'utilisation de renseignements confidentiels est habituellement impossible à prouver. Comme le fait remarquer le lord juge Fletcher Moulton dans l'arrêt *Rakusen*, [TRADUCTION] «ce n'est pas possible de le prouver» (p. 841). J'ajouterais: «ou de le réfuter». S'il en était autrement, le public se satisferait sans doute d'une preuve d'absence de préjudice. Mais comme c'est impossible à prouver, le critère

that the public represented by the reasonably informed person would be satisfied that no use of confidential information would occur. That, in my opinion, is the overriding policy that applies and must inform the court in answering the question: Is there a disqualifying conflict of interest? In this regard, it must be stressed that this conclusion is predicated on the fact that the client does not consent to but is objecting to the retainer which gives rise to the alleged conflict.

Typically, these cases require two questions to be answered: (1) Did the lawyer receive confidential information attributable to a solicitor and client relationship relevant to the matter at hand? (2) Is there a risk that it will be used to the prejudice of the client?

In answering the first question, the court is confronted with a dilemma. In order to explore the matter in depth may require the very confidential information for which protection is sought to be revealed. This would have the effect of defeating the whole purpose of the application. American courts have solved this dilemma by means of the "substantial relationship" test. Once a "substantial relationship" is shown, there is an irrebuttable presumption that confidential information was imparted to the lawyer. In my opinion, this test is too rigid. There may be cases in which it is established beyond any reasonable doubt that no confidential information relevant to the current matter was disclosed. One example is where the applicant client admits on cross-examination that this is the case. This would not avail in the face of an irrebuttable presumption. In my opinion, once it is shown by the client that there existed a previous relationship which is sufficiently related to the retainer from which it is sought to remove the solicitor, the court should infer that confidential information was imparted unless the solicitor satisfies the court that no information was imparted which could be relevant. This will be a difficult burden to discharge. Not only must the court's degree of satisfaction be such that it would withstand the scrutiny of the reasonably informed member of the public that no such information passed, but the burden must be discharged without revealing the

retenu doit tendre à convaincre le public, c'est-à-dire une personne raisonnablement informée, qu'il ne sera fait aucun usage de renseignements confidentiels. Voilà, à mon sens, la ligne directrice primordiale que doit suivre la Cour en répondant à la question: sommes-nous en présence d'un conflit d'intérêts de nature à rendre l'avocat inhabile à agir? Il faut souligner à cet égard que cette conclusion suppose que le client n'a pas acquiescé, mais qu'il s'oppose au mandat qui est à l'origine du conflit présumé.

D'ordinaire, ce type d'affaire soulève deux questions: premièrement, l'avocat a-t-il appris des faits confidentiels, grâce à des rapports antérieurs d'avocat à client, qui concernent l'objet du litige? Deuxièmement, y a-t-il un risque que ces renseignements soient utilisés au détriment du client?

Pour répondre à la première question, la cour doit résoudre un dilemme. Il peut en effet être nécessaire, pour examiner à fond la question, de révéler les renseignements confidentiels que l'on cherche justement à protéger. La requête perdrait alors tout sens. Les tribunaux américains ont résolu ce dilemme en adoptant le critère du «lien important». L'établissement d'un «lien important» fait naître une présomption irréfragable selon laquelle l'avocat a appris des faits confidentiels. À mon avis, ce critère est trop rigide. Il peut arriver qu'il soit prouvé hors de tout doute raisonnable qu'aucun renseignement confidentiel pertinent en l'espèce n'a été divulgué; le requérant a pu, par exemple, reconnaître ce fait au cours de son contre-interrogatoire. Or, cette preuve serait inefficace au regard d'une présomption irréfragable. À mon avis, dès que le client a prouvé l'existence d'un lien antérieur dont la connexité avec le mandat dont on veut priver l'avocat est suffisante, la Cour doit en inférer que des renseignements confidentiels ont été transmis, sauf si l'avocat convainc la Cour qu'aucun renseignement pertinent n'a été communiqué. C'est un fardeau de preuve dont il aura bien de la difficulté à s'acquitter. Non seulement la Cour doit être convaincue, au point qu'un membre du public raisonnablement informé serait persuadé qu'aucun renseignement de cette nature n'a été transmis, mais encore la preuve doit être faite sans que soient révélés les détails de la

specifics of the privileged communication. Nonetheless, I am of the opinion that the door should not be shut completely on a solicitor who wishes to discharge this heavy burden.

The second question is whether the confidential information will be misused. A lawyer who has relevant confidential information cannot act against his client or former client. In such a case the disqualification is automatic. No assurances or undertakings not to use the information will avail. The lawyer cannot compartmentalize his or her mind so as to screen out what has been gleaned from the client and what was acquired elsewhere. Furthermore, there would be a danger that the lawyer would avoid use of information acquired legitimately because it might be perceived to have come from the client. This would prevent the lawyer from adequately representing the new client. Moreover, the former client would feel at a disadvantage. Questions put in cross-examination about personal matters, for example, would create the uneasy feeling that they had their genesis in the previous relationship.

The answer is less clear with respect to the partners or associates in the firm. Some courts have applied the concept of imputed knowledge. This assumes that the knowledge of one member of the firm is the knowledge of all. If one lawyer cannot act, no member of the firm can act. This is a rule that has been applied by some law firms as their particular brand of ethics. While this is commendable and is to be encouraged, it is, in my opinion, an assumption which is unrealistic in the era of the mega-firm. Furthermore, if the presumption that the knowledge of one is the knowledge of all is to be applied, it must be applied with respect to both the former firm and the firm which the moving lawyer joins. Thus there is a conflict with respect to every matter handled by the old firm that has a substantial relationship with any matter handled by the new firm irrespective of whether the moving lawyer had any involvement with it. This is the "overkill" which has drawn so much criticism in the United States to which I have referred above.

communication privilégiée. Néanmoins, je suis d'avis qu'il ne convient pas de priver de tout moyen d'action l'avocat qui veut s'acquitter de ce lourd fardeau.

Il s'agit en deuxième lieu de décider si un mauvais usage sera fait des renseignements confidentiels. Un avocat qui a appris des faits confidentiels pertinents ne peut pas agir contre son client ou son ancien client. Il sera automatiquement déclaré inhabile à agir. Peu importe qu'il donne l'assurance ou qu'il promette de ne pas utiliser les renseignements. L'avocat ne peut pas compartimenter son esprit de façon à trier les renseignements appris de son client et ceux obtenus d'autres sources. Au surplus, il risquerait de s'abstenir d'utiliser des renseignements obtenus licitement, par crainte de donner l'impression qu'ils proviennent du client. L'avocat serait ainsi empêché de bien représenter son nouveau client. Par surcroît, l'ancien client aurait le sentiment d'être désavantagé. Il ne pourrait s'empêcher de penser que les questions posées au cours du contre-interrogatoire au sujet de sa vie privée, par exemple, ont leur origine dans la relation antérieure.

La réponse est moins claire en ce qui concerne les associés. Certains tribunaux ont appliqué le concept de la connaissance présumée. Selon cette présomption, tous les membres du cabinet sont censés savoir ce que sait chacun d'eux. Si l'un de ceux-ci ne peut pas agir, aucun ne le peut. Certains cabinets s'en sont fait une ligne de conduite. Certes, l'initiative est louable et mérite d'être encouragée, mais c'est à mon sens une présomption irréaliste à l'ère des mégacabinets. De plus, si la présomption, selon laquelle lorsqu'un avocat est au courant, tous le sont, doit être appliquée, elle doit l'être à l'égard de l'ancien cabinet comme de celui auquel s'est joint l'avocat qui vient de changer de cabinet. Par conséquent, il y a un conflit relativement à chaque affaire traitée par l'ancien cabinet qui a un rapport important avec une affaire traitée par le nouveau cabinet, peu importe que l'avocat qui vient de changer s'en soit occupé ou non. C'est l'effet démesuré qui a entraîné tant de critiques aux États-Unis, que j'ai mentionnées précédemment.

Moreover, I am not convinced that a reasonable member of the public would necessarily conclude that confidences are likely to be disclosed in every case despite institutional efforts to prevent it. There is, however, a strong inference that lawyers who work together share confidences. In answering this question, the court should therefore draw the inference, unless satisfied on the basis of clear and convincing evidence, that all reasonable measures have been taken to ensure that no disclosure will occur by the "tainted" lawyer to the member or members of the firm who are engaged against the former client. Such reasonable measures would include institutional mechanisms such as Chinese Walls and cones of silence. These concepts are not familiar to Canadian courts and indeed do not seem to have been adopted by the governing bodies of the legal profession. It can be expected that the Canadian Bar Association, which took the lead in adopting a Code of Professional Conduct in 1974, will again take the lead to determine whether institutional devices are effective and develop standards for the use of institutional devices which will be uniform throughout Canada. Although I am not prepared to say that a court should never accept these devices as sufficient evidence of effective screening until the governing bodies have approved of them and adopted rules with respect to their operation, I would not foresee a court doing so except in exceptional circumstances. Thus, in the vast majority of cases, the courts are unlikely to accept the effectiveness of these devices until the profession, through its governing body, has studied the matter and determined whether there are institutional guarantees that will satisfy the need to maintain confidence in the integrity of the profession. In this regard, it must be borne in mind that the legal profession is a self-governing profession. The Legislature has entrusted to it and not to the court the responsibility of developing standards. The court's role is merely supervisory, and its jurisdiction extends to this aspect of ethics only in connection with legal proceedings. The governing bodies, however, are concerned with the application of conflict of interest standards not only in respect of litigation but in other fields which constitute the greater part of the practice of law. It would be wrong, therefore, to shut out the

En outre, je ne suis pas convaincu qu'un membre raisonnable du public conclurait nécessairement qu'il est probable que les renseignements confidentiels seront divulgués à tout coup en dépit des efforts concertés faits pour prévenir ce résultat. Pourtant, il y a fort à présumer que les avocats qui travaillent ensemble échangent des renseignements confidentiels. Pour trancher cette question, le tribunal doit donc tirer les conséquences de cette présomption, sauf s'il est persuadé, par des preuves claires et convaincantes, que toutes les mesures raisonnables ont été prises pour veiller à ce que l'avocat en cause ne divulgue rien aux membres du cabinet qui agissent contre son ancien client. Parmi ces mesures raisonnables, on pourrait compter des mécanismes institutionnels comme les murailles de Chine et les cônes de silence. Ces concepts sont peu connus des tribunaux canadiens et même ne semblent pas avoir été adoptés par les organes directeurs de la profession. On peut s'attendre à ce que l'Association du barreau canadien qui a pris l'initiative par l'adoption en 1974 d'un Code de déontologie professionnelle, prenne encore l'initiative de déterminer si les dispositifs institutionnels sont efficaces et d'élaborer des normes en matière d'utilisation des dispositifs institutionnels qui seront uniformes au Canada. Bien que je ne soit pas prêt à dire qu'un tribunal ne devrait jamais considérer ces dispositifs comme la preuve d'une protection suffisante tant que les organes directeurs ne les auront pas approuvés et n'auront pas adopté des règles régissant leur fonctionnement, je ne puis envisager qu'un tribunal le fasse sauf dans des circonstances exceptionnelles. Par conséquent, dans la grande majorité des cas, il est improbable que les tribunaux admettent l'efficacité de ces dispositifs, tant que la profession, par l'entremise de son organe directeur, n'aura pas étudié la question et déterminé qu'il existe des garanties institutionnelles répondant à la nécessité de conserver la confiance dans l'intégrité de la profession. À cet égard, il convient de se rappeler que la profession d'avocat est une profession qui se régit elle-même. C'est à elle, et non aux tribunaux, que le législateur a confié la responsabilité d'élaborer des normes. Les tribunaux ont simplement un rôle de surveillance et leur compétence porte sur cet aspect de la déontologie uniquement en ce qui

Student-at-law as counsel

105 A student-at-law whose registration is not under suspension may act as counsel in proceedings before the Court of Appeal, the Court of King's Bench or the Court of Justice, or before a judge of any of those courts, in the circumstances provided for in the rules and subject to any conditions prescribed by the rules.

RSA 2000 cL-8 s105;RSA 2000 c16(Supp) s51;AR 217/2022;AR 75/2023

Practice of law

106(1) No person shall, unless the person is an active member of the Society,

(a) practise as a barrister or as a solicitor,

(b) act as a barrister or as a solicitor in any court of civil or criminal jurisdiction,

(c) commence, carry on or defend any action or proceeding before a court or judge on behalf of any other person, or

(d) settle or negotiate in any way for the settlement of any claim for loss or damage founded in tort.

(2) Subsection (1) does not apply to the following:

(a) a student-at-law in respect of anything permitted to be done by the student-at-law in the course of the student-at-law's service under articles or under the rules made pursuant to section 105;

(b) a person who holds an authorization granted under section 48 in respect of services provided within the scope of the authorization and in accordance with the rules under section 48, or a person who is deemed by the rules to hold an authorization under section 48 in respect of services provided in accordance with the rules;

(c) a professional corporation in respect of services performed while it holds a permit under Part 8 that is not under suspension;

(d) a person employed by an active member or professional corporation pursuant to a resolution of the Benchers under section 108 in respect of services provided by that person within the scope of that person's employment and in accordance with the resolution;

(e) a university law student in respect of services permitted to be provided by that student by the rules that are provided in accordance with the conditions prescribed by the rules;

(f) a notary public in respect of services provided by the notary public in the exercise of powers conferred on the notary public by law;

(g) a public officer in respect of any acts performed by the public officer within the scope of the public officer's authority as a public officer;

(h) a person who acts on the person's own behalf in an action, matter or proceeding to which the person is a party;

(i) a person in respect of the preparation by the person of a document for the person's own use or to which the person is a party;

(j) an officer or employee of a corporation, partnership or unincorporated body in respect of the preparation of a document for the use of the corporation, partnership or unincorporated body or to which it is a party;

(k) a person licensed as an insurance adjuster under the *Insurance Act* in respect of services provided by the person as an insurance adjuster;

(l) a person permitted by statute to appear as the agent of another person before a justice of the peace, the Court of Justice or a provincial judge in respect of services provided by that person as an agent;

(m) a person holding professional legal qualifications obtained in a country outside Canada in respect of services permitted to be provided by that person in accordance with the rules in giving legal advice respecting the laws of that country.

(3) Subsection (2)(l) does not include a person who is disbarred.

RSA 2000 cL-8 s106;AR 75/2023

Misrepresentation as to professional status

107(1) No person shall, unless the person is an active member of the Society, hold out or represent that the person is an active member of the Society, or a person lawfully entitled to practise law or to carry on the practice or profession of a barrister or solicitor.

(2) No person shall, unless the person is a member of the Society, hold out or represent that the person is a member of the Society or a barrister and solicitor.

all other documents and exhibits in the possession of the Court of Justice pertaining to the matter.

(3) When a matter is transferred into the Court of King's Bench, the Court of King's Bench may, on any conditions it considers proper,

(a) continue the matter to completion, or

(b) order the matter to be recommenced.

(4) If a matter is transferred into the Court of King's Bench and a party had abandoned a portion of the party's claim or counterclaim under section 9.6(4), that party may, subject to any conditions that the Court of King's Bench considers proper, withdraw the abandonment of that portion of the claim or counterclaim and proceed on the entire claim or counterclaim, as the case may be.

RSA 2000 cP-31 s56;RSA 2000 c16(Supp) s22;AR 217/2022; AR 75/2023

Transfer into Court of Justice

57(1) On application by a party to the clerk, with the consent of the other parties, before the hearing commences, an action in the Court of King's Bench in which the claim is within the jurisdiction of the Court of Justice may be transferred into the Court of Justice by the clerk of the Court of King's Bench at the judicial centre where the action was commenced.

(2) An action transferred into the Court under subsection (1) continues as if it had been commenced in that Court.

RSA 2000 cP-31 s57;2009 c53 s146;AR 217/2022;AR 75/2023

58, **59** Repealed RSA 2000 c16(Supp) s23.

60 Repealed 2001 c24 s8.

Refusal to file documents

61(1) The Court may, if it considers it proper to do so, order a clerk not to accept a particular document for filing.

(2) An order made under subsection (1) does not prejudice the right of a person to proceed in any other manner permitted by law.

RSA 2000 cP-31 s61;2015 c12 s6

Representation of party

62(1) A person is entitled to be represented by

(a) a barrister and solicitor, or

(b) an agent

in respect of any proceedings under this Part.

(2) Subsection (1)(b) does not apply to proceedings that take place in the Court of King's Bench.

RSA 2000 cP-31 s62;AR 217/2022

Effect of informality

63 No proceeding is invalid for informality if there has been substantial compliance with the requirements of this Part and the regulations.

RSA 2000 cP-31 s63;2015 c12 s6

Pre-trial conference

64(1) In any action under this Part, the Court may direct the parties or their lawyers or agents, as the case may be, to appear before the Court for a pre-trial conference to consider one or more of the following:

(a) the possibility of settling the claim, counterclaim or other matter, as the case may be, by agreement;

(b) the simplification of the issues;

(c) the necessity or desirability of amendments to pleadings;

(d) the possibility of obtaining any admission that will facilitate the trial;

(e) any other matters that may aid in the disposition of the action.

(2) During or at the conclusion of a pre-trial conference or otherwise in respect of a pre-trial conference, the Court may make an order doing one or more of the following:

(a) giving directions with respect to matters raised or otherwise considered during the pre-trial conference;

(b) setting out the results of the pre-trial conference;

(c) amending pleadings;

(d) striking out pleadings and entering judgment by reason of the failure of a party to attend a pre-trial conference;

(d.1) striking out or amending a claim, dispute note or counterclaim by reason that the claim, dispute note or counterclaim

(i) discloses no cause of action or defence,

Court of King's Bench of Alberta

Citation: Royal Bank of Canada v Courtoreille, 2024 ABKB 302

Date: 20240524
Docket: 2310 00279
Registry: Red Deer

Between:

Royal Bank of Canada

Plaintiff

- and -

Patrick Courtoreille also known as Patrick John Courtoreille

Defendant

Memorandum of Decision
of Associate Chief Justice
K.G. Nielsen

I. Introduction

[1] On March 10, 2023, Royal Bank of Canada (RBC) filed a Statement of Claim alleging that Patrick Courtoreille (Mr. Courtoreille) had an unpaid credit card debt of $17,067.46 (the *Debt Lawsuit*). Mr. Courtoreille on March 28, 2023 filed a Statement of Defence that acknowledged he had obtained and used a credit card from RBC, but claimed that RBC had "... failed to verify ownership of the indebtedness behind the Contracts ...". Further, Mr. Courtoreille "... [denies] defaulting on the Contract as alleged ..." by RBC, and so the lawsuit should be dismissed.

[2] RBC applied for Summary Judgment, pursuant to rr 7.2-7.3 of the *Alberta Rules of Court*, Alta Reg 124/2010. That Application was heard by Applications Judge Park on August 29, 2023. Applications Judge Park granted judgment in favour of RBC for $19,452.98 and solicitor client

costs. The August 29, 2023 Decision and Order have not to date been appealed by Mr. Courtorielle.

[3] This matter has been referred to me as the Administrative Justice of the Court of King's Bench of Alberta who responds to abusive litigation and litigants. Here, specifically, the defence advanced by Mr. Courtoreille was based on well-known and rejected Organized Pseudolegal Commercial Argument (OPCA) concepts: ***Meads v Meads***, 2012 ABQB 571. Even more serious is that these arguments were advanced by third parties to the litigation: "UnitedWeStandPeople", and at the August 29, 2023 an individual named "Kevin Kumar" (Mr. Kumar). Mr. Kumar acted as Mr. Courtoreille's representative in the August 29, 2023 hearing.

[4] Mr. Kumar is well known to this Court. This Memorandum of Decision responds to Mr. Kumar's illegal and inappropriate involvement in the *Debt Lawsuit*.

II. OPCA Arguments

[5] Part of the evidence submitted by RBC is an Affidavit of Marsha Christensen, sworn on August 24, 2023, that attached communications received by counsel for RBC in the period leading up to the August 29, 2023 hearing. These emails purport to originate from an entity called UnitedWeStandPeople, which is the "Chosen Agent" of Mr. Courtorielle. Here are some of the key elements of those communications:

1) Mr. Courtorielle has designated a Chosen Agent in the *Debt Lawsuit*, and RBC and its counsel must interact with that Chosen Agent, UnitedWeStandPeople;

2) UnitedWeStandPeople claims that a "Private Lender" will pay Mr. Courtorielle's debts;

3) Mr. Courtorielle rejects he has any debts, unless RBC provides:

    a) an "original wet ink signed loan document (NOT a photocopy)", and

    b) an affidavit from a "... Chartered Accountant verifying the debt was not sold ..."; and

4) neither Mr. Courtorielle or the Private Lender will provide any money unless RBC provides the "wet ink" contract and accountant's affidavit.

[6] The requirement for a wet ink signature contract is a well-documented and notorious pseudolaw debt elimination strategy. Claims that a debt may only be established by an original wet ink signature physical contract are a common and legally rejected OPCA motif deployed as a basis alleged to invalidate debt contracts, e.g., ***Gacias v Equifax Canada Co***, 2019 ABQB 640 at para 14; ***Royal Bank of Canada v Skrapec***, 2011 BCSC 1827 at para 24, leave to appeal to BCCA refused, 2012 BCCA 10; ***Xceed Mortgage Corporation/Corporation hypothécaire Xceed c Pépin-Bourgouin***, 2011 QCCS 2116 at paras 15–18; ***Banque Royale du Canada c Tremblay***, 2013 QCCQ 12827 at para 14, aff'd 2013 QCCA 2035 at para 7; ***Canadian Imperial Bank of Commerce v Piedrahita***, 2012 NBQB 101 at para 8, leave to appeal to NBCA refused (2012), 387 NBR (2d) 399 (CA); ***The Bank of Nova Scotia v Lai-Ping Lee***, 2013 ONSC 6698 at para 10; ***First National Financial GP Corporation v Maritime Residential Housing Development Ltd***, 2013 NSSC 219 at para 7; ***Toronto-Dominion Bank v Devries***, 2013 CanLII 41978 (Ont Sup Ct (Sm Cl Ct)) at paras 2–3, 40–48; ***Banque Royale du Canada c Minicozzi***, 2013 QCCQ 6566 at para 21, aff'd 2013 QCCA 1722; ***Bank of Montreal v Rogozinsky***, 2014 ABQB 771 at

paras 24, 41–43, 56, 603 AR 261; ***Toronto-Dominion Bank v Thompson***, [2015] OJ No 5141 (QL) at paras 7, 16 (Sup Ct (Sm Cl Ct)); ***Alberta v Greter***, 2016 ABQB 293 at paras 2, 11, 16; ***Royal Bank of Canada v 101000039 Saskatchewan Ltd***, 2017 SKQB 253 at paras 9, 19; ***Knutson (Re)***, 2018 ABQB 858, note 9 at Appendix E; ***Royal Bank of Canada v Anderson***, 2022 ABQB 354 at paras 23-24; ***Royal Bank of Canada v Anderson***, 2022 ABQB 525 at para 33; ***Osadchuk v The King***, 2023 TCC 70 at para 5. If this rule were, in fact, true, then no contract formed via electronic means would ever be enforceable.

[7] Second, the demand for an accountant to verify a debt has not been sold is commonly referred to as the "securitization" OPCA argument. RBC introduced extensive documentation on Mr. Courtorielle's credit card and its use. However, both UnitedWeStandPeople, and Mr. Kumar at the August 29, 2023 hearing, made extensive and aggressive demands claiming the information before the Court was not enough. The securitization OPCA money-for-nothing argument has also been repeatedly rejected by Canadian courts: e.g., ***Royal Bank of Canada v Skrapec***; ***Xceed Mortgage Corporation/Corporation hypothécaire Xceed c Pépin-Bourgouin***; ***Banque Royale du Canada c Tremblay***; ***The Bank of Nova Scotia v Lai-Ping Lee***, ***Bank of Montreal v Rogozinsky***; ***Alberta v Greter***; ***Royal Bank of Canada v 101000039 Saskatchewan Ltd***, ***Gacias v Equifax Canada Co***, 2019 ABQB 640, action struck out as an abuse of court processes, 2019 ABQB 739; ***Toronto Dominion Bank v Giercke***, 2021 ABQB 262, action struck out as an abuse of court processes, 2021 ABQB 320.

[8] A third pseudolaw scheme is also apparent from the materials received by the Court. The emails in Ms. Christensen's Affidavit include links to a website, "https://unitedwestandpeople.com". The website obviously promotes legally false OPCA concepts. For example, a link at the top of the website reads "Click Here To Learn More About How To Access Your Birth Certificate Bond". This same general language, "... reclaim your Birth Certificate Bonds / Birthright ..." is also located in a YouTube video website screen print in Ms. Christensen's Affidavit, Exhibit "C". Similarly, another printout in Exhibit "C" states:

> Via Your BIRTH CERTIFICATE BOND! Learn How To Access It For FREE! UnitedWeStandPeople.com ... If You Are Not Aware Of Your Birth Certificate Bond That Has Hundreds of ThousandsOf Dollars In It For You Watch This Series ! (sic)

[9] The "Birth Bond" concept is part of "Strawman Theory", the idea that a person has two halves, a "flesh and blood" entity, and an immaterial "Strawman". The reproduced website printouts in Ms. Christensen's Affidavit point to the rather notorious "Meet Your Straw Man" YouTube video. Supposedly, the Strawman is associated with a secret bank account, what the UnitedWeStandPeople Internet materials calls the "Birth Certificate Bond", that contains vast sums of money that can be tapped with secret techniques and documents: ***Meads v Meads***, paras 417-446, 531-543. I have reviewed and rejected Strawman Theory and Birth Bond schemes in ***Burles v Lakhani***, 2023 ABKB 409 at paras 9-21.

[10] No Court in any jurisdiction has accepted the stereotypic conspiratorial not-law concepts that make up pseudolaw. Employing pseudolaw is always an abuse of Court processes, and warrants immediate Court response: ***Unrau v National Dental Examining Board***, 2019 ABQB 283 at paras 180, 670-671 (***Unrau #2***). Furthermore, any litigation that involves Strawman Theory is presumed to be in bad faith, and for abusive, ulterior purposes: ***Fiander v Mills***, 2015 NLCA 31 at paras 37-40; ***Rothweiler v Payette***, 2018 ABQB 288 at paras 6-21; ***Unrau #2*** at para

180. There is no question that UnitedWeStandPeople and Mr. Kumar are advancing rejected and abusive pseudolaw concepts.

[11] Other problematic items disclosed in Ms. Christensen's Affidavit include that counsel for RBC was threatened with Law Society of Alberta complaints, and allegedly had engaged in "... gross negligence and human rights violations ...". UnitedWeStandPeople also appears to have created multiple YouTube videos attacking counsel for RBC, and bulk emailed these claims and videos to numerous Alberta law firms and lawyers.

[12] More recently, UnitedWeStandPeople has appeared in two debt related proceedings before the Court of King's Bench of Alberta:

(i) *Kerslake v Capital One Bank*, Action No. 2304 00761; and

(ii) *Kohut v Capital One Bank*, Action No.2403 08261.

In each case the Plaintiffs are debtors who claim to defeat their outstanding debts using the OPCA securitization scheme discussed above. The two Statements of Claim contain duplicate and parallel language, that on a balance of probabilities establishes a common source.

[13] Thus, the UnitedWeStandPeople OPCA debt-elimination scheme is continuing before the Court of King's Bench of Alberta. That is a reason for the Court to take further steps.

III. Kevin Kumar

[14] As previously indicated, Mr. Kumar, the person who appeared via videoconference and who acted as the representative for Mr. Courtorielle, is well-known to this Court. Along with Derek Ryan Johnson, Mr. Kumar was one of the two directing personalities of a "Dollar Dealer" mortgage fraud scam that operated in the Calgary area in 2010-2014. Associate Chief Justice Rooke provides a detailed review of the Kumar and Johnson operation in ***Unrau #2*** at paras 205-212. Reproduction of that explanation in full is appropriate to illustrate Mr. Kumar's background:

> ... a "Dollar Dealer" swindle that operated between 2010-2014 in the Calgary area. That resulted in the Court in Calgary issuing many *Judicature Act*, ss 23-23.1 court access restriction orders which attempted to manage a mortgage fraud scheme advanced by a number of conspirators who targeted distressed persons whose homes were being foreclosed. The fraudsters also acted as middlemen for investors, and scammed funds from both sides, all the while jousting in court with the original mortgage lenders and court decision makers.
>
> ... The Calgary Dollar Dealer ring's activities included counter-attack lawsuits against opposing parties, their lawyers, and Masters in Chambers of this Court. These scammers and their activities are partially documented in two reported decisions: ***Scotia Mortgage Corporation v Gutierrez***, 2012 ABQB 683, 84 Alta LR (5th) 349 and ***1158997 Alberta Inc v Maple Trust Co***, 2013 ABQB 483, 568 AR 286 [***1158997***]. The scam also had an OPCA aspect, since the scammers invoked OPCA theories in their lawsuits to challenge whether banks lend money, claiming instead lenders 'just create money from thin air' ...

The scammers even went so far as to set up their own fake vigilante court, the "Alberta Court of Kings Bench" [sic], which issued relatively authentic-looking Statements of Claim targeting those who attempted to recover their lost money.

... The scammers operated under a number of guises, both personal and via a series of corporations. Though many cost awards were made, none appear to have been paid. New personas appeared, one after another, including what may have been an entirely fictional person, "Ty Griffiths", who interposed himself as an agent for the scammers and their corporations, claiming he was defending their "human rights": ***1158997***, at paras 58-60. Then, a new person appeared in court to, in turn, act as the agent for Ty Griffiths: para 60.

The *Judicature Act*, ss 23-23.1 court access restriction orders issued by this Court as it attempted to control this fraud illustrate the Dollar Dealers' evasion strategy:

> Dec. 15, 2010 - Wilson J, docket 1001-08610 - 1158997 Alberta Ltd is declared a "vexatious litigant" and prohibited from instituting further proceedings itself or on behalf of any other person. This order appears to operate in this Court only.
>
> Feb. 17, 2011 - Strekaf J, docket 1001-14143 - 1158997 Alberta Inc is declared a "vexatious litigant" and is prohibited from instituting further steps in this proceeding without leave, on behalf of itself or any other person.
>
> Nov. 1, 2012 - Master Laycock, docket 1201 09396 - Derek Ryan Johnson and his employees are prohibited from appearing to represent 1158997 Alberta Inc, Partners in Success Mortgage Inc, and any related companies.
>
> Dec. 21, 2012 - Wilson J, docket 1001-08610 - 1158997 Alberta Ltd and 1158897 Alberta Inc are declared "vexatious litigants" and prohibited from instituting further proceedings themselves or on behalf of any other person. This order appears to be limited to operate in this Court only.
>
> July 2, 2013 - Lovecchio J, dockets 1201-11892, 1201-12187, 1201-14301 - 1158997 Alberta Inc, 1660112 Alberta Ltd, 1691482 Alberta Inc, Partners in Success Mortgage Inc, Ashley Critch, Carla Kells, Derek Ryan Johnson, Ty Griffiths, Ajay Aneja are globally prohibited from any litigation activity, except with leave, in all Alberta courts, on behalf of themselves or any other entity or estate. Sarbjit Sarin and Jason Mizzoni are declared vexatious litigants, but no court access restrictions are imposed.
>
> November 12, 2013 - Lovecchio J, dockets 1301-05965, 1301-04219 - 1158997 Alberta Inc, 1603376 Alberta Inc, 1731272 Alberta Inc, Partners in Success Mortgage Inc, and Derek Ryan Johnson, are globally prohibited from any litigation activity, except with leave, in all Alberta courts, on behalf of themselves or any other entity or estate.

... In the end, attempts to control this scam and its participants accounted for two thirds of all global court access restriction orders issued by the judicial officers of this Court in Calgary between 2000-2014. I cannot meaningfully assess the

> amount of time and judicial, staff, and victim resources wasted by these individuals.
>
> ... What is noteworthy, and, frankly, rather depressing, is viewed objectively, this scenario shows the limits of the current approach to court access restrictions. Though many court orders were issued to rein in these scammers, and cost sanctions were imposed to deter further misconduct, the scammers simply reappeared and counterattacked. New corporate guises and possibly false personas were introduced to draw out the process. In ***1158997*** Justice Lovecchio explains the kingpin of the scammer ring, Derek Ryan Johnson, was also frustrating parallel efforts by the Real Estate Counsel of Alberta to control his activities: para 74. Johnson had been fined for operating as an unlicensed real estate agent. These scammers only stopped when Johnson and an accomplice, Kevin Kumar, were found in contempt of court by Martin J and each sentenced to two months in jail: ***Real Estate Counsel of Alberta v Johnson***, Calgary 1401-11567, 1401-12622, 1501-02988 (Alta QB). Johnson and Kumar had also between them accumulated $125,000.00 in fines, which presumably remain unpaid.
>
> ... What the Johnson Dollar Dealer fraud ring illustrates is that even comprehensive court access restrictions can sometimes be circumvented or defeated by motivated and creative abusive court actors. Anyone can register a corporation and thereby obtain a new identity under which to engage in litigation misconduct. The same problem exists for false identities, as illustrated by "Ty Griffiths". Where a court participant is simply abusing court processes for greed or profit - and succeeding - there is no reason why that individual would do otherwise in the future, provided the benefits obtained continue to outweigh costs.
> ...

[15] Another Memorandum of Decision by Hawco J illustrates Mr. Kumar operating as the central player in one instance of the Dollar Dealer scheme. In ***Glover v Kumar***, 2012 ABQB 516, the Court was asked to clear the land titles record for a property that had gone through the Dollar Dealer scam, and in which Mr. Kumar was now on title. Justice Hawco describes at paras 7-20 how Mr. Kumar played off the various involved individuals and institutions, and in the process registered a one third interest in the property. Justice Hawco concluded Mr. Kumar had no legitimate interest in the property, ordered the Alberta Land Titles office remove Mr. Kumar's registration, and observed how Mr. Kumar had deceived multiple actors in the transaction: para 47.

[16] Legal academic investigation has also identified Mr. Kumar as the directing mind of UnitedWeStandPeople, and demonstrated that the current unitedwestandpeople.com website is Mr. Kumar reviving the 2010-2014 Dollar Dealer scam website, "privatesectoract.com", that offered Strawman Theory and Birth Bond debt and mortgage elimination services: Donald J Netolitzky, "The Dead Sleep Quiet: History of the Organized Pseudolegal Commercial Argument Phenomenon in Canada - Part II" (2023) 60:3 Alta L Rev 795 at 828.

[17] I conclude, based on Mr. Kumar's history and his more recent activities, that steps should be taken to control Mr. Kumar's activities before the Court of King's Bench of Alberta. Mr. Kumar is not a lawyer, so he is prohibited from representing persons before the Court of King's Bench of Alberta: *Legal Profession Act*, RSA 2000, c L-8 s 106. Mr. Kumar is clearly engaged

in the unauthorized practice of law. That is a first reason why Mr. Kumar should be subject to control. I note that at the August 29, 2023 hearing Mr. Kumar was uncooperative, argumentative, and aggressive.

[18] This Court has a broad and flexible inherent jurisdiction to control its processes, so that the Court may operate effectively to achieve its functions: ***R v Cunningham***, 2010 SCC 10 at para 10; I H Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Curr Legal Probs 23 at 27-28. That inherent jurisdiction includes the authority to remove lawyers, where appropriate: ***MacDonald Estate v Martin***, [1990] 3 SCR 1235 at 1245. That same authority applies to non-lawyer representatives and agents. The law in Canada is clear that a Court does not merely have the authority to restrict and control who acts as a legal representative of any type, but, further, that the Court has a positive obligation to ensure persons appearing before the Court are "... properly represented ...", and "... to maintain the rule of law and the integrity of the court generally ...": ***R v Dick***, 2002 BCCA 27, para 7.

[19] Anyone who uses OPCA concepts abuses the Court: ***Unrau #2*** at para 180. A person who endorses and/or applies OPCA schemes is not an appropriate litigation representative: ***R v Dick***; ***Scotia Mortgage Corporation v Landry***, 2018 ABQB 951; ***Mukagasigwa v Nkusi***, 2023 ABKB 423, leave to appeal refused 2023 ABCA 272. That is a further reason why Mr. Kumar should be prohibited from participating in litigation in which he is not a party.

[20] Mr. Kumar's past and current OPCA guru activities, his being incarcerated for contempt after ignoring Court Orders and professional regulation, his promoting money for nothing and debt elimination scams, and his record of abusing lenders and debtors by "playing from the middle" means Mr. Kumar has no legitimate place in the Court of King's Bench of Alberta, except if he, personally, is a litigant.

[21] Mr. Kumar is not an appropriate litigation representative or McKenzie friend. Mr. Kumar should have no role in the litigation of other people. I conclude Mr. Kumar should not be permitted to participate in the litigation of other people before the Court of King's Bench of Alberta.

[22] Given these conclusions, I make the following Orders:

1. Kevin Kumar shall only communicate with the Court of King's Bench of Alberta using the name "Kevin Kumar", and not using initials, an alternative name structure, or a pseudonym.

2. Kevin Kumar is prohibited from:

   (i) providing legal advice, preparing documents intended to be filed in the Court of King's Bench of Alberts for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf; and

   (ii) acting as an agent, next friend, McKenzie friend (from ***McKenzie v McKenzie***, [1970] 3 All ER 1034 (UK CA) and *Alberta Rules of Court*, Alta Reg 124/2010, ss 2.22-2.23), or any other form of representation in proceedings, before the Court of King's Bench of Alberta.

3. For clarity, Kevin Kumar is entirely prohibited from any further participation in any sense in these actions:

(i) *Royal Bank of Canada v Patrick Courtoreille also known as Patrick John Courtoreille*, Court of King's Bench Action No. 2310 00279 proceeding;

(ii) *Terry Kerslake v Capital One Bank*, Court of King's Bench Action No. 2304 00761; and

(iii) *Timothy Laurea Kohut v Capital One Services (Canada) Inc*, Court of King's Bench Action No. 2403 08261.

4. The Clerks of the Court of King's Bench of Alberta shall refuse to accept or file any documents or other materials from Kevin Kumar, unless Kevin Kumar is a named party in the action in question.

IV. Conclusion

[23] Mr. Kumar is prohibited from participation in Court of King's Bench of Alberta proceedings, except where he, personally, is a named party.

[24] The Court shall prepare the Order giving effect to this Memorandum of Decision. Mr. Kumar and Mr. Courtoreille's approval of that Order is dispensed with, pursuant to the *Alberta Rules of Court*. This Memorandum of Decision and the corresponding Order may be served upon Mr. Courtoreille and Mr. Kumar to the email addresses in the Statement of Defence (Patrick.Courtoreille@gmail.com) and the email communications reproduced in Ms. Christensen's Affidavit (unitedwestandpeople@gmail.com).

[25] A copy of the Memorandum of Decision and Order will also be directed to counsel for RBC and Capital One Bank. In light of Mr. Kumar's resuming his fraudulent OPCA activities in Alberta, I also direct a copy of this Memorandum of Decision and corresponding Order be sent to the Real Estate Council of Alberta, and the Law Society of Alberta.

[26] I very strongly recommend Mr. Courtoreille read the case law cited in this Memorandum of Decision. Most of these judgments may be accessed from the CanLII website (www.canlii.org) at no cost. If Mr. Courtoreille employs pseudolaw tactics in future Court of King's Bench of Alberta litigation then Mr. Courtoreille can anticipate negative outcomes, and potentially litigation and litigant management steps.

[27] Mr. Kumar will likely disagree with this result. Mindful of the ***Pintea v Johns***, 2017 SCC 23 instruction that Canadian judges shall provide information on litigation alternatives to persons not represented by lawyers, if Mr. Kumar seeks to challenge steps imposed in this Memorandum of Decision, then the appropriate remedy is with the Court of Appeal of Alberta.

Dated at the City of Edmonton, Alberta this 24th day of May, 2024.

K.G. Nielsen
A.C.J.C.K.B.A.

Court of King's Bench of Alberta

Citation: Bonville v President's Choice Financial, 2024 ABKB 356

Date: 20240618
Docket: 2403 01300; 2401 06187
Registry: Edmonton

Between:

Action No. 2403 01300

Claire Bonville

Plaintiff

- and -

President's Choice Financial

Defendant

And between:

Action No. 2401 06187

Sydney Socorro M. Davis

Plaintiff

- and -

President's Choice Financial

Defendant

Corrected judgment: A corrigendum was issued on June 19, 2024; the corrections have been made to the text and the corrigendum is appended to this judgment.

Memorandum of Decision
of Acting Chief Justice
K.G. Nielsen

I. Introduction

[1] The past several years has seen the Court of King's Bench of Alberta encounter a dramatic increase in the frequency of matters in which an unauthorized representative has attempted, sometimes successfully, to introduce themselves into litigation without a legitimate basis: e.g., ***ATB Financial v Dimsdale Auto Parts Ltd***, 2024 ABKB 143 (***Dimsdale***); ***AVI v MHVB***, 2020 ABQB 489, representation and litigation activity restrictions imposed 2020 ABQB 790 (***AVI***); ***Docken v Anderson***, 2023 ABKB 291 (***Docken #1***); ***Docken v Anderson***, 2023 ABKB 313 (***Docken #2***); ***Docken v Anderson***, 2023 ABKB 515 (***Docken #3***); ***Lemay v Zen Residential Ltd.***, 2023 ABKB 682 (***Lemay***); ***Manulife Bank of Canada v Thomas***, 2023 ABKB 564 (***Thomas***); ***Mukagasigwa v Nkusi***, 2023 ABKB 42, late appeal dismissed as hopeless, 2023 ABCA 272 (***Nkusi***); ***Richardson v Schafer***, 2022 ABKB 645; ***Tican v Alamgir***, 2022 ABKB 626, unauthorized representation prohibition made permanent 2022 ABKB 843, leave to appeal denied 2023 ABCA 115; ***Van Nostrand (Re)***, 2024 ABKB 293. These interfering third parties take on a lawyer-like role, and claim authority with various titles such as "*amicus curiae*" (e.g., ***Dimsdale***), or "McKenzie friends" (e.g., ***Lemay***; ***Van Nostrand (Re)***), or claim representative status via a "power of attorney" (e.g., ***AVI***).

[2] Many of these interfering third parties are promoters of "Organized Pseudolegal Commercial Arguments" (OPCA) (***Meads v Meads***, 2012 ABQB 571 (***Meads***)), a category of not-law concepts that purport to be the actual law, and offer extraordinary authority, benefits, and immunities, e.g., ***AVI***; ***Dimsdale***; ***Docken #1***; ***Docken #2***; ***Docken #3***; ***Nkusi***; ***Thomas***. What has been long recognized is that some individuals have made a business of promoting and selling OPCA strategies for their own benefit. In ***Meads*** at paras 85-158, Associate Chief Justice Rooke named and described certain of these individuals, who he called "gurus". Rooke ACJ at paras 669-670 compared these gurus to the "evil counsellors" and "falsifiers" of Dante's *Inferno*:

> Persons who purposefully promote and teach proven ineffective techniques that purport to defeat valid state and court authority, and circumvent social obligations, appear to fall into those two categories. That they do so, and for profit at the expense of naive and vulnerable customers, is worse.

[3] For a period in the late 2010s pseudolaw activity and guru promoters were much less common in the Court of King's Bench of Alberta. That pattern has now, unfortunately, reversed. Debt and mortgage elimination and "money for nothing" scams are, at present, the OPCA litigation type most commonly encountered in the Court. One such recent example is the re-emergence of a Kevin Kumar, who operates a pseudolaw debt elimination scheme named

"UnitedWeStandPeople". Kevin Kumar has a lengthy history of abusive and illegal litigation and real-estate related activities that dates back to the early 2010s, when he and other collaborators operated "PrivateSectorAct.com", a Calgary-area "Dollar Dealer" mortgage fraud that is documented in ***Unrau v National Dental Examining Board***, 2019 ABQB 28 at paras 205-212 (***Unrau #2***) and ***Royal Bank of Canada v Courtoreille***, 2024 ABKB 302 at paras 14-17 (***Courtoreille***). Kevin Kumar has been incarcerated for contempt of court. Unfortunately, that has not deterred him from continuing to promote pseudolaw schemes.

[4] ***Courtoreille*** describes and refutes the UnitedWeStandPeople debt elimination scheme, which has these parts:

1) the debtor claims to have a "private lender" who will pay for any outstanding debt;

2) the debtor demands the debt contract is proven by an "original wet ink signed loan document (NOT a photocopy)"; and

3) the lender must provide an affidavit from a chartered accountant to verify the debt was not sold, otherwise no debt exists.

[5] The "wet ink" contract and "securitization" are long debunked pseudolaw strategies that are reviewed in detail in ***Courtereille*** at paras 6 and 7, respectively. The lender in ***Courtoreille*** also introduced evidence from the UnitedWeStandPeople website and correspondence that demonstrated Kevin Kumar is teaching "Strawman Theory", an OPCA concept so notoriously false that simply engaging this concept presumptively establishes bad faith and abusive ulterior motives: ***Courtoreille*** at paras 8-10.

[6] On this basis, and given his history, Kevin Kumar was explicitly prohibited from acting as a litigation representative or engaging in lawyer-type activities:

> ... Kevin Kumar is prohibited from:
>
> (i) providing legal advice, preparing documents intended to be filed in the Court of King's Bench of Alberta for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf; and
>
> (ii) acting as an agent, next friend, McKenzie friend (from *McKenzie v McKenzie*, [1970] 3 All ER 1034 (UK CA) and *Alberta Rules of Court*, Alta Reg 124/2010, ss 2.22-2.23), or any other form of representation in proceedings, before the Court of King's Bench of Alberta.
>
> (***Courtoreille*** at para 22).

Kevin Kumar was also explicitly banned from any participation in three Court of King's Bench of Alberta Actions in which UnitedWeStandPeople strategies had been advanced.

II. Colton Kumar

[7] On June 7, 2024, Counsel for President's Choice Bank (PC Bank) wrote to me to draw to my attention two Court of King's Bench of Alberta Actions that involve its client:

- *Claire Bonville v President's Choice Financial*, Court of King's Bench of Alberta Action No. 2403 01300, Statement of Claim filed January 19, 2024 (*Bonville lawsuit*); and
- *Sydney Socorro M Davis v President's Choice Financial*, Court of King's Bench of Alberta Action No. 2401 06187, Statement of Claim filed May 3, 2024 (*Davis lawsuit*).

[8] The bodies of the *Bonville lawsuit* and the *Davis lawsuit* Statements of Claim are identical, except that the *Bonville lawsuit* has one additional paragraph, paragraph 8, below:

> **Statement of Facts relied on:**
>
> l. PC Financial was served a Registered Letter on [date] containing details of a payout arrangement to pay [name's] debt with PC in Full
>
> 2. [Name] qualified for private financing and had arranged the funds to pay PC in full
>
> 3. Within the PC CardHolder Agreement it states "18.3 Assignment We may sell, assign or transfer any or all of our rights or obligations under this Cardholder Agreement"
>
> 4. Due to the fact PC stated in the Agreement they could sell the right to the agreement at any time [name] requested PC provide Proof of Ownership of the debt to ensure she was forwarding funds to the correct entity in the case that her debt had been sold to a third party
>
> 5. [Name] requested a sworn affidavit from Presidents Choice's chartered accountant that stated they had checked the ledgers and the debt was not sold, simply because the chartered accountant would be the only entity with access to the information in order to make that claim
>
> 6. PC never provided the requested documentation that proves PC still maintains ownership of the rights to [name's] debt
>
> 7. PC made multiple "Missed Payment" reports even though they were well aware [name] was attempting to pay the debt in full
>
> 8. Claire Served PC a "No Contact" Letter on November 9th
>
> 9. PC continued to harass [name] while she awaited the requested documentation from PC
>
> **Remedy sought**
>
> 10. All false Credit Reports from [date] forward be removed from [name's] Credit history
>
> 11. $100,000 In damages for Negligence in the workplace leading to damages, False or Misleading Credit Reporting, and Harassment

[9] PC Bank has filed Statements of Defence in both the *Bonville lawsuit* (March 1, 2024) and *Davis lawsuit* (June 7, 2024) that plead that both Plaintiffs have defaulted on credit card debts of $7,801.687 and $6,050.08, respectively, and that in each case the Plaintiff demanded an original not photocopy "wet ink" contract to establish the credit card debt, along with other

documentation. The Plaintiffs each claimed that "Colton Kumar" is acting as their representative in the credit card debt dispute, and provided contact information:

- website: UnitedWeStandPeople.com;
- email address: UnitedWeStandPeople@gmail.com; and
- telephone number: (250) 306 1534.

[10] Counsel for PC Bank noted in their correspondence that there appear to be linkages between the *Bonville lawsuit* and the *Davis lawsuit*, and Kevin Kumar's abusive pseudolaw activities as documented in ***Courtoreille***. Counsel indicates that PC Bank has given instructions to apply to the Court for summary judgment in the *Bonville lawsuit* and the *Davis lawsuit*.

III. Effective Response to For Profit Litigation Schemes that Exploit Court Processes

[11] The usual approach to abusive litigation is two-fold:

1) individual abusive and bad purpose lawsuits are terminated as they are identified, usually by rr 3.68 and 7.2-7.3 of the *Alberta Rules of Court*, Alta Reg 124/2010 and Civil Practice Note No. 7; and

2) when a sufficient volume of abusive litigation that involves a particular party has accumulated then that party may be subject to *Judicature Act*, RSA 2000, c J-2, ss 23-23.1 court access restrictions.

[12] These processes each have sharp limitations. Processes that terminate individual bad actions still involve significant Court resources and litigant expenses. Cost awards are often, bluntly, a polite fiction, that are never collected by the abused party. Similarly, court access restrictions only occur too late, after "persistent" and repeated bad litigation steps and lawsuits. Court access restrictions may only be imposed as a "last ditch" effort to control a litigant after all other steps, including case management, have failed: ***Jonsson v Lymer***, 2020 ABCA 167. This approach all but inevitably means substantial waste of Court resources and harm inflicted on targeted litigants.

[13] The current situation with the emerging UnitedWeStandPeople OPCA debt elimination / "money for nothing" scam is even worse. One or more individuals are advertising on the Internet that they have secret techniques that will eliminate debt. That has now led to a large array of different but centrally coordinated litigants entering into the Court apparatus, using parallel techniques and documents, but in separate litigation processes. This litigation debt elimination business is the proverbial hydra with many heads, sprouting from a body that is out of reach.

[14] The Court of King's Bench of Alberta has already experienced the effect of such a networked program because in 2010-2014 the Court of King's Bench of Alberta in the Judicial Centre of Calgary was targeted by one such scheme, that involved Kevin Kumar, personally. As is reviewed in ***Unrau #2*** at paras 205-212, court-mediated attempts to manage this mortgage "Dollar Dealer" scam were a near total failure. The participants, including Kevin Kumar himself, simply outmaneuvered litigation and litigant control by inventing new identities, via "pop up" shell corporations, and what appeared to be pseudonyms, and then "agents" purporting to act on behalf of these actors. Counter-attack litigation, such as the *Bonville lawsuit* and the *Davis lawsuit*, were launched at little cost against lenders. Judicial decision makers were also sued, personally. The "Dollar Dealers" went so far as to set up their own fake vigilante court, the

not be required to pay to the Clerk of the Court $10,000 in security for costs pursuant to r 4.22 of the *Alberta Rules of Court*.

3) Sydney Socorro M. Davis has until July 5, 2024 to submit to my office and serve on counsel for PC Bank Written Submissions and/or Affidavit evidence as to why she should not be required to pay to the Clerk of the Court $10,000 in security for costs pursuant to r 4.22 of the *Alberta Rules of Court*.

[23] To be explicit, so Ms. Bonville and Ms. Davis have no misunderstanding, if this Court imposes a security for costs requirement in the *Bonville lawsuit* and/or the *Davis lawsuit*, then failure to pay those amounts will:

1) result in the Plaintiff's action being terminated;

2) result in a costs award against the Plaintiff paid to PC Bank as a consequence of PC Bank being the successful party (r 10.29 of the *Alberta Rules of Court*); and

3) may result in the Plaintiff being required to pay an additional r 10.49(1) of the *Alberta Rules of Court* penalty to the Clerk of the Court for engaging in abusive litigation that misuses the Court's resources.

The *Bonville lawsuit* and/or the *Davis lawsuit* will proceed if the security for costs amounts are paid, and then may be subject to other litigation management steps, if those are sought by the Defendant.

[24] The Order giving effect to this step will be prepared by the Court, and served on Ms. Bonville and Ms. Davis by mail to the addresses on the *Bonville lawsuit* and the *Davis lawsuit* Statements of Claim. I request that Counsel for PC Bank also serve Ms. Bonville and Ms. Davis by electronic means, if PC Bank has information to effect service in that manner. Ms. Bonville and Ms. Davis's approval of that Order is dispensed with, pursuant to r 9.4(2)(c) of the *Alberta Rules of Court*.

[25] I very strongly recommend that the *Bonville lawsuit* and the *Davis lawsuit* Plaintiffs immediately consult with an accredited lawyer qualified to practice law in Alberta. Ms. Bonville and Ms. Davis face significant potential financial and legal consequences.

[26] The next issue is how to manage the person or persons directing UnitedWeStandPeople. I do not know if Kevin Kumar and Colton Kumar are the same or different people. Kevin Kumar is known to participate in fraudulent schemes in which multiple aliases and alter egos have been deployed: ***Unrau #2***. Representation restrictions were imposed on Kevin Kumar in ***Courtoreille***. It is plausible that Kevin Kumar has simply adopted a new name to evade Court-imposed litigation management steps.

[27] Following the principle above that meaningful litigation management in these circumstances can only be effected by combining litigation management and financial consequences, I take these steps. Kevin Kumar and Colton Kumar shall by July 5 2024 submit to my office and serve on counsel for PC Bank:

1) an Affidavit that:

a) deposes the *personal* mailing addresses, telephone numbers, and email addresses of Kevin Kumar and Colton Kumar;

b) deposes the URLs of all Internet and social media websites operated by Kevin Kumar and Colton Kumar, directly, or indirectly as UnitedWeStandPeople or any other purported debt elimination service; and

c) attaches as exhibits a Canada or provincial government-issued identification document that includes a photograph and date of birth of Kevin Kumar and Colton Kumar;

2) Written Submissions and Affidavit evidence as to why Colton Kumar should not be subject to the same representative and lawyer activity restrictions imposed on Kevin Kumar in ***Courtoreille*** at para 22; and

3) Written Submissions and Affidavit evidence as to why:

a) Kevin Kumar and/or Colton Kumar should not be made joint and severally subject to pay any costs awards made against the Plaintiffs in the *Bonville lawsuit* and/or the *Davis lawsuit*; and

b) Kevin Kumar and/or Colton Kumar have an adequate excuse so that they are not subject to r 10.49(1) of the *Alberta Rules of Court* penalties for their directing and engaging in OPCA litigation.

[28] The Order giving effect to this step will be prepared by the Court. Kevin Kumar's and Colton Kumar's approval of that Order is dispensed with, pursuant to r 9.4(2)(c) of the *Alberta Rules of Court*.

[29] If PC Bank wishes to make Written Submissions and/or provide Affidavit evidence in relation to these security for costs and litigation and litigant management steps in relation to the *Bonville lawsuit* and the *Davis lawsuit*, then these should be received by July 12, 2024 Given the unusual nature of the abusive litigation scheme and its distributed character, there plausibly is additional UnitedWeStandPeople litigation ongoing in Alberta Courts, in addition to the five matters that have been identified to date. Other affected parties may also submit Affidavit evidence concerning the UnitedWeStandPeople scheme and Kevin Kumar and Colton Kumar, due also on July 12, 2024.

[30] Kevin Kumar and Colton Kumar should also consult with and retain lawyers. They now face direct Court-ordered penalties as well as contempt of Court sanctions. Service of this Memorandum of Decision and the corresponding Order on Kevin Kumar and Colton Kumar will be via email to: UnitedWeStandPeople@gmail.com.

[31] Copies of this Memorandum of Decision and corresponding Order will be directed to Counsel for:

- Royal Bank of Canada in the *Royal Bank of Canada v Patrick Courtoreille also known as Patrick John Courtoreille*, Court of King's Bench Action No. 2310 00279 proceeding;
- Capital One Bank in the *Terry Kerslake v Capital One Bank*, Court of King's Bench Action No. 2304 00761 proceeding; and
- Capital One Services (Canada) Inc. in the *Timothy Laurea Kohut v Capital One Services (Canada) Inc*, Court of King's Bench Action No. 2403 08261 proceeding.

[32] Mindful of the ***Pintea v Johns***, 2017 SCC 23 instruction that Canadian judges shall provide information on litigation alternatives to persons not represented by lawyers, if the

Court of King's Bench of Alberta

Citation: Bonville v President's Choice Financial, 2024 ABKB 483

Date: 20240820
Docket: 2403 01300; 2401 06187; 2403 05588; 2403 09627
Registry: Edmonton and Calgary

Between:

Action No. 2403 01300

Claire Bonville

Plaintiff

- and -

President's Choice Financial

Defendant

And between:

Action No. 2401 06187

Sydney Socorro M. Davis

Plaintiff

- and -

President's Choice Financial

Defendant

And between:

Action No. 2403 05588

Timothy Lauren Kohut

Plaintiff

- and -

Royal Bank of Canada

Defendant

And between:

Action No. 2403 09627

Royal Bank of Canada

Plaintiff

- and -

Timothy Kohut, also known as Timothy Lauren Kohut

Defendant

Memorandum of Decision
of Associate Chief Justice
K.G. Nielsen

I. Introduction and Background

[1] This Memorandum of Decision has both a general and specific focus. Specifically, this Memorandum of Decision has the Court engage processes to manage what appears to be abusive litigation conducted by three individuals to evade debt obligations by means of misapplication of Court processes.

[2] More broadly, this Memorandum of Decision responds to the proliferation of "money-for-nothing" / debt elimination schemes being marketed on the Internet by for-pay promoters

III. Colton Kumar and Kevin Kumar

[72] In ***Courtoreille*** at paras 14-17 I reviewed the abusive litigation record of Kevin Kumar. In brief, Kevin Kumar was one of two kingpins who between 2010 and 2014 operated a large scale OPCA money-for-nothing / debt elimination mortgage scam under the name "PrivateSectorAct.com". That URL now redirects traffic to the UnitedWeStandPeople.com website. During this period Kevin Kumar conducted a "Dollar Dealer" scam which this Court was unable to manage using conventional litigation and litigant management steps, as reviewed in ***Unrau #2*** at paras 205-212. The PrivateSectorAct.com scammers launched multiple lawsuits and appeals, including those that targeted Court decision makers, created new corporations to continue their scams, and deployed what appear to be false aliases and agents. PrivateSectorAct.com even went so far as to set up a fake vigilante court, the "Alberta Court of Kings Bench" (sic) that issued what to a layperson might appear to be valid Court filings and Orders.

[73] Court countermeasures under the *Judicature Act*, *Alberta Rules of Court*, and common law processes utterly failed to constrain these strategies. What finally ended the PrivateSectorAct.com scam was that Kevin Kumar was found guilty of contempt of court and sentenced to two months incarceration: ***Real Estate Counsel of Alberta v Johnson***, Calgary 1401-11567, 1401-12622, 1501-02988 (Alta QB).

[74] In 2023 Kevin Kumar resurfaced and appeared in the ***Courtoreille*** proceeding, acting as the debtor's OPCA litigation representative. On that basis in ***Courtoreille*** at para 22 I imposed these restrictions on Kevin Kumar:

> 1. Kevin Kumar shall only communicate with the Court of King's Bench of Alberta using the name "Kevin Kumar", and not using initials, an alternative name structure, or a pseudonym.
>
> 2. Kevin Kumar is prohibited from:
>
> (i) providing legal advice, preparing documents intended to be filed in the Court of King's Bench of Alberts for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf; and
>
> (ii) acting as an agent, next friend, McKenzie friend (from ***McKenzie v McKenzie***, [1970] 3 All ER 1034 (UK CA) and *Alberta Rules of Court*, Alta Reg 124/2010, ss 2.22-2.23), or any other form of representation in proceedings, before the Court of King's Bench of Alberta.
>
> 3. For clarity, Kevin Kumar is entirely prohibited from any further participation in any sense in these Actions:
>
> (i) *Royal Bank of Canada v Patrick Courtoreille also known as Patrick John Courtoreille*, Court of King's Bench Action No.: 2310 00279;
>
> (ii) *Terry Kerslake v Capital One Bank*, Court of King's Bench Action No. 2304 00761; and
>
> (iii) *Timothy Lauren Kohut v Capital One Services (Canada) Inc*, Court of King's Bench Action No. 2403 08261.

4. The Clerks of the Court of King's Bench of Alberta shall refuse to accept or file any documents or other materials from Kevin Kumar, unless Kevin Kumar is a named party in the action in question.

Kevin Kumar did not appeal this result.

[75] In the *Bonville*, *Davis*, and *Kohut* UnitedWeStandPeople litigation a different person has been involved; a "Colton Kumar". Since Kevin Kumar has a history of making up fictitious names and entities, this Court considered it possible this is just another pseudonym. On that basis the Court ordered in ***Bonville #1*** at para 27 that Kevin Kumar and Colton Kumar (if there is such a person) shall by July 5 2024 submit to my office and serve on counsel for PC Bank:

1) an Affidavit that:

a) deposes the personal mailing addresses, telephone numbers, and email addresses of Kevin Kumar and Colton Kumar;

b) deposes the URLs of all Internet and social media websites operated by Kevin Kumar and Colton Kumar, directly, or indirectly as UnitedWeStandPeople or any other purported debt elimination service; and

c) attaches as exhibits a Canada or provincial government-issued identification document that includes a photograph and date of birth of Kevin Kumar and Colton Kumar;

2) Written Submissions and Affidavit evidence as to why Colton Kumar should not be subject to the same representative and lawyer activity restrictions imposed on Kevin Kumar in ***Courtoreille*** at para 22; and

3) Written Submissions and Affidavit evidence as to why:

a) Kevin Kumar and/or Colton Kumar should not be made joint and severally subject to pay any costs awards made against the Plaintiffs in the Bonville lawsuit and/or the Davis lawsuit; and

b) Kevin Kumar and/or Colton Kumar have an adequate excuse so that they are not subject to r 10.49(1) of the *Alberta Rules of Court* penalties for their directing and engaging in OPCA litigation.

[76] PC Bank and other potentially relevant litigants were invited to provide submissions and Affidavit evidence concerning Kevin Kumar, Colton Kumar, and the UnitedWeStandPeople business: ***Courtoreille*** at para 29.

[77] Nothing was received from either Kevin Kumar or Colton Kumar by July 5, 2024. That means that Kevin Kumar and Colton Kumar are in *prima facie* contempt of Court in relation to production and submission of the Affidavit with their information, websites, and identification.

[78] PC Bank filed a July 11, 2024 Affidavit sworn by Alma Corado that documents information concerning UnitedWeStandPeople, its operation, and Colton Kumar and Kevin Kumar. I accept this evidence as accurate. First, Colton Kumar is an actual person. A September 18, 2021 obituary of a Joan Anne Kumar indicates Kevin Kumar is Colton Kumar's father. The Corado Affidavit includes information linking these two individuals and their joint participation in the UnitedWeStandPeople scheme. Thus, UnitedWeStandPeople is a father/son operation. I conclude, on a balance of probabilities, that the UnitedWeStandPeople operation is a shared

collaborative venture between Colton Kumar and Kevin Kumar. The Corado Affidavit also provides images of these two individuals. I reproduce these below as Appendices "A" and "B" for the purposes of public, government, and regulatory information and enforcement. This step is appropriate because Colton Kumar and Kevin Kumar did not meet this Court's ***Bonville #1*** at para 27 Order.

[79] Based on the Corado Affidavit, UnitedWeStandPeople appears to now operate under a number of names:

- CreditorControl.ca (https://www.creditorcontrol.ca/), and affiliated social media TikTok page (@iongivafuxxwututhink) and Instagram account (@themoneymink), apparently operated by Colton Kumar;
- UnitedWeStandPeople (https://unitedwestandpeople.com/) and affiliated YouTube account (https://www.youtube.com/@unitedwestandpeople9472), apparently operated by Kevin Kumar;
- ReduceMyDebtByThousands (https://reducemydebtbythousands.com/) and affiliated YouTube account (https://www.youtube.com/@reducemydebtbythousands3734) and Facebook page (https://www.facebook.com/reducemydebtbythousands/); and
- Debt Consolidation in Canada – Beat The Banks – Secrets Exposed (https://www.facebook.com/debtconsolididationincanada/) and YouTube channel (@reducemydebtbythousands4006).

[80] The Corado Affidavit confirms my conclusion in ***Courtoreille*** at paras 5-10 that Kevin Kumar employs OPCA strategies, including endorsing presumptively abusive Strawman Theory concepts and the wet ink signature and securitization schemes. As reviewed above, Colton Kumar is doing the same. On the basis of this information, and the Court's findings in ***Courtoreille***, ***Bonville #1***, and ***Kohut #1***, I conclude that Kevin Kumar and Colton Kumar are collaborators in the UnitedWeStandPeople scam and its broader manifestations. I will generally respond to these two individuals together for that reason.

[81] After the deadlines for submissions set in ***Bonville #1*** at para 27 expired, the Court on July 18, 2024 received an unsigned email from the email address "unitedwestandpeople@gmail.com", which appears to have been directed to counsel for PC Bank, and copied to the Court. That attached an undated electronic document titled "Letter to K.G. NEILSEN Response to order" (sic), and signed by "Colton Kumar Affected Party". In the email and "Letter", Colton Kumar:

1) denies he is involved in any OPCA schemes;

2) discloses he is the private lender in the UnitedWeStandPeople scheme, who operates a business, 1304139BCLTD, in:

> ... which he is under contract with the borrowers to pay, Colton Kumar's actions to validate debts before paying them are entirely within his legal rights and align with consumer protection principles ...

3) states PC Bank and the Court are engaged in fraud;

4) threatening a media and publicity campaign that PC Bank is misleading the Court, and that Loblaws cannot afford the scandal resulting from its lending misconduct with the UnitedWeStandPeople borrowers;

5) that:

> ... any attempt to restrict or shut down Colton Kumar's business websites would violate his rights under the **Canadian Charter of Rights and Freedoms**, specifically Section 2(b), which guarantees freedom of thought, belief, opinion, and expression, including freedom of the press and other media of communication ...

and

6) that the Corado Affidavit does not comply with the "**Canadian Rules of Court**".

[82] I note in relation to these claims that there is no such thing as the "Canadian Rules of Court". PC Bank is not subject to *Charter* prohibitions, since PC Bank is not a government actor: ***Dolphin Delivery Ltd v RWDSV***, Local 580, 1986 CanLII 5 (SCC), [1986] 2 SCR 573; In Canada economic and business activity is not protected by the *Charter*: ***Irwin Toy Ltd v Quebec (Attorney General)***, 1989 CanLII 87 (SCC), [1989] 1 SCR 927, 58 DLR (4th) 577. Furthermore, there is no constitutional right to abuse Court processes: ***Trial Lawyers Association of British Columbia v British Columbia (Attorney General)***, 2014 SCC 59 at para 47.

[83] Colton Kumar's July 18, 2024 correspondence has no legal weight because, as he himself argued, in Alberta documentary evidence must take the form of an Affidavit. Though Colton Kumar was directed to provide evidence in that manner in ***Bonville #1***, he has not done so. Despite that, I accept Colton Kumar's correspondence for two points:

1) Colton Kumar and Kevin Kumar admitting they have received the ***Bonville #1*** and ***Kohut #1*** Memoranda of Decision; and

2) Colton Kumar and Kevin Kumar do not dispute their participation in and direction of the UnitedWeStandPeople scheme.

[84] The Court now moves to three issues.

A. Representation and Litigation Restrictions on Colton Kumar

[85] First, the Court in ***Bonville #1*** requested submissions from Colton Kumar as to why he should not be subject to the same representation and litigation activities as were imposed on Kevin Kumar in ***Courtoreille*** at para 22. In his July 18, 2024 materials Colton Kumar provided no principled argument as to why he should not be subject to the Kevin Kumar ***Courtoreille*** management steps. What is particularly relevant is Colton Kumar instead openly admits he engages the same money-for-nothing / debt elimination schemes as his father, and Colton Kumar declares he is doing nothing wrong.

[86] This Court has a broad and flexible inherent jurisdiction to control its processes, so that the Court may operate effectively to achieve its functions: ***R v Cunningham***, 2010 SCC 10 at para 10; I H Jacob, "The Inherent Jurisdiction of the Court" (1970) 23 Curr Legal Probs 23 at 27-28. That inherent jurisdiction includes the authority to remove lawyers (***MacDonald Estate v***

Martin, 1990 CanLII 32 (SCC), [1990] 3 SCR 1235 at 1245) and determine whether non-lawyers are appropriate representatives, agents, and other kinds of participants in Canadian legal proceedings (***R v Dick***, 2002 BCCA 27; ***Van Nostrand (Re)***, 2024 ABKB 293; ***World Energy GH2 Inc v Ryan***, 2023 NLSC 109 (***Ryan***); ***Lemay v Zen Residential Ltd***, 2023 ABKB 682; ***AVI v MHVB***, 2020 ABQB 489 (***AVI***)).

[87] The law in Canada is clear that a Court does not merely have the authority to restrict and control who acts as a legal representative of any type, but, further, that the Court has a positive obligation to ensure persons appearing before the Court are "... properly represented ...", and "... to maintain the rule of law and the integrity of the Court generally ...": ***R v Dick*** at para 7.

[88] Anyone who uses OPCA concepts abuses the Court: ***Unrau #2*** at para 180. A person who endorses and/or applies OPCA schemes is not an appropriate litigation representative or participant in other persons' litigation: ***R v Dick***; ***Ryan***; ***Dimsdale***; ***Landry***; ***Thomas***; ***AVI***; ***Mukagasigwa v Nkusi***, 2023 ABKB 423, leave to appeal refused 2023 ABCA 272; ***Gauthier v Starr***, 2016 ABQB 213, leave denied 2018 ABCA 14; ***Shannon v The Queen***, 2016 TCC 255.

[89] Colton Kumar's participation in the UnitedWeStandPeople money-for-nothing / debt elimination scheme, both directly and as a directing mind, means Colton Kumar has no legitimate place in the Court of King's Bench of Alberta, except if he, personally, is a litigant. He is not an appropriate litigation representative or *McKenzie* friend. Colton Kumar should have no role in the litigation of other people. I conclude Colton Kumar should not be permitted to participate in the litigation of other people before the Court of King's Bench of Alberta.

[90] Given these conclusions, I direct that Colton Kumar should be subject to the same litigation representation and activity restrictions imposed on Kevin Kumar in ***Courtoreille***:

1. Colton Kumar shall only communicate with the Court of King's Bench of Alberta using the name "Colton Kumar", and not using initials, an alternative name structure, or a pseudonym.

2. Colton Kumar is prohibited from:

   (i) providing legal advice, preparing documents intended to be filed in the Court of King's Bench of Alberta for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf; and

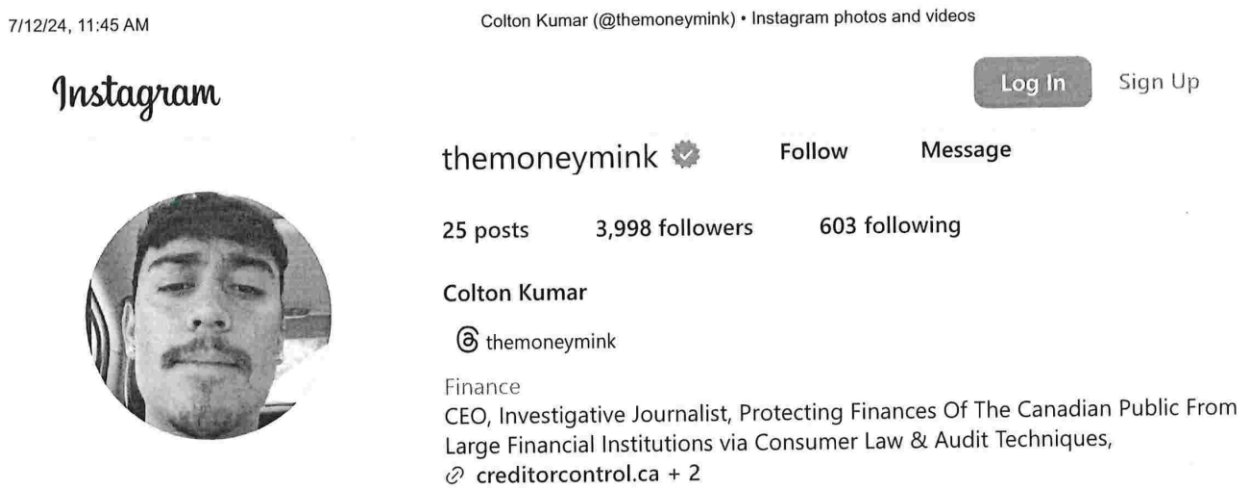
   (ii) acting as an agent, next friend, *McKenzie* friend (from ***McKenzie v McKenzie***, [1970] 3 All ER 1034 (UK CA) and *Alberta Rules of Court*, Alta Reg 124/2010, ss 2.22-2.23), or any other form of representation in proceedings, before the Court of King's Bench of Alberta.

3. For clarity, Colton Kumar is entirely prohibited from any further participation in any sense in these actions:

   (i) *Bonville v President's Choice Financial*, Court of King's Bench of Alberta Action No.: 2403 01300

   (ii) *Davis v President's Choice Financial*, Court of King's Bench of Alberta Action No.: 2401 06187

Appendix "A" – Instagram Page and Photograph of Colton Kumar



Appendix "B" – Still From Video Recording of Kevin Kumar

Court of King's Bench of Alberta

Citation: Bonville v President's Choice Financial, 2024 ABKB 546

Date:
Docket: 2403 01300; 2401 06187; 2403 05588; 2403 09627
Registry: Edmonton

Between:

Action No. 2403 01300
Registry: Edmonton

Claire Bonville

Plaintiff

- and -

President's Choice Financial

Defendant

And between:

Action No. 2401 06187
Registry: Calgary

Sydney Socorro M. Davis

Plaintiff

- and -

President's Choice Financial

Defendant

And between:

Action No. 2403 05588
Registry: Edmonton

Timothy Lauren Kohut

Plaintiff

- and -

Royal Bank of Canada

Defendant

And between:

Action No. 2403 09627
Registry: Edmonton

Royal Bank of Canada

Plaintiff

- and -

Timothy Kohut, also known as Timothy Lauren Kohut

Defendant

Memorandum of Decision
of Associate Chief Justice
K.G. Nielsen

I. Introduction

[1] This Memorandum of Decision concludes a litigation management process conducted in Memoranda of Decision reported as ***Bonville v President's Choice Financial***, 2024 ABKB 356

4) the debtors engaged in baseless retaliatory steps that sought excessive and ungrounded remedies not supported by any relevant particulars; and

5) the debtors were given the opportunity to "put their money where their mouth is", to establish they engaged this litigation in good faith, as fair-dealing litigants, but instead did not take that opportunity, leading to the inference their attack/counterattack steps did not have a legitimate purpose, but were conducted to inflict expense, cause delay, and defeat legitimate legal rights.

[11] Globally, these steps breach the debtors' r 1.2 of the *Alberta Rues of Court* obligations to not abuse and misuse Court of King's Bench of Alberta processes. None of the debtors made any submissions on why their actions had an adequate excuse.

[12] My response to the debtors might be different if they had provided at least some indication they understood their errors and misconduct, and would not engage in parallel activity in the future. But they did not. While that non-response does not aggravate their misconduct, the debtors' not acknowledging the detailed reasons and law presented to them in ***Bonville #2*** re-emphasizes why a meaningful and tangible step is appropriate so that the debtors are subject to negative consequences for misusing Court processes to attempt to evade and frustrate collection of legitimate debts.

[13] I, therefore, direct that Ms. Bonville, Ms. Davis, and Mr. Kohut are each ordered to pay a $5,000 r 10.49(1) of the *Alberta Rules of Court* penalty to the Court of King's Bench of Alberta Clerk of the Court. This, I stress, is not a debt owed to the Court, but a penalty due to the Province of Alberta for the debtors wasting state and taxpayer resources in their improper attempts to apply a money-for-nothing / debt elimination scheme. The debtors should be aware that if these amounts are not paid, that the Alberta government may engage its debt collection and recovery processes to enforce this Court's Order by garnishees and other enforcement steps.

[14] Counsel for President's Choice Financial and Royal Bank of Canada shall prepare and serve the Orders giving effect to Part II of this Memorandum of Decision. The approval of Ms. Bonville, Ms. Davis, Mr. Kohut, Colton Kumar and Kevin Kumar's of these Orders is dispensed with pursuant to the *Alberta Rules of Court*.

III. Colton Kumar and Kevin Kumar

[15] ***Bonville #1***, ***Bonville #2***, and ***Courtoreille*** review and summarize the UnitedWeStandPeople promoters Colton Kumar and Kevin Kumar father and son team litigation and their OPCA activities. In ***Bonville #1***, I instructed Colton Kumar and Kevin Kumar provide:

1) Affidavit evidence documenting their identification information and Internet activity;

2) written argument and Affidavit evidence on why Colton Kumar should not be made subject to prohibitions on representative/agent activities before this Court that parallel those previously imposed on his father in ***Courtoreille***;

3) written submissions and Affidavit evidence on whether Colton Kumar and Kevin Kumar should not be made jointly and severally liable for costs imposed against Ms. Bonville and Ms. Davis; and

4) written submissions and affidavit evidence on whether Colton Kumar and Kevin Kumar should not be subject to a r 10.49(1) of the *Alberta Rules of Court* penalty for directing and engaging in OPCA litigation.

[16] Neither Colton Kumar nor Kevin Kumar responded to these instructions. In ***Bonville #2*** I imposed representative/agent prohibitions on Colton Kumar and Kevin Kumar (paras 85-91), and made Kevin Kumar and Colton Kumar jointly and severally liable for any costs awards imposed on their clients Ms. Bonville and Ms. Davis (paras 92-105).

[17] Colton Kumar and Kevin Kumar did not provide the Affidavit as required in ***Bonville #1*** at para 27, and remain in *prima facie* contempt of the Court on that requirement.

[18] Kevin Kumar has not responded to the instructions and submissions requirements in ***Bonville #1*** and ***Bonville #2***, though he has posted multiple videos on the UnitedWeStandPeople websites that reject and denounce the Court of King's Bench of Alberta's decisions and authority. Kevin Kumar is obviously aware of the ***Bonville #1*** and ***Bonville #2*** decisions. Colton Kumar and Kevin Kumar on July 18, 2024 copied the Court on an email that comments on and rejects the Court's conclusions in this litigation, and states everything Colton Kumar and Kevin Kumar have done is legal and appropriate. It is the bank lenders who engage in fraud: ***Bonville #2*** at paras 81-83. Both Colton Kumar and Kevin Kumar were therefore clearly aware of and had notice of this Court's actions, instructions, and decisions.

[19] Thus, Colton Kumar and Kevin Kumar *intentionally* made no response to the ***Bonville #1*** instruction that they make submissions on whether they should be subject to a r 10.49(1) of the *Alberta Rules of Court* penalty for their UnitedWeStandPeople activities. Rather than immediately proceed to determine whether a penalty of that kind should be imposed, I instead in ***Bonville #2*** at paras 110-112 gave Colton Kumar and Kevin Kumar one final chance to make submissions to explain their conduct, due September 6, 2024:

> ... Rather than immediately impose r 10.49(1) of the *Alberta Rules of Court* penalties at this point, I provide Colton Kumar and Kevin Kumar one more opportunity to establish they should not be subject to r 10.49(1) penalties. First, they are in *prima facie* contempt of court for not providing the Affidavit evidence required in ***Bonville #1*** at para 27. Whether they purge that contempt is a factor I will consider in whether to impose a r 10.49(1) of the *Alberta Rules of Court* penalty, and, if so, the quantum of that penalty.
>
> ... Colton Kumar and Kevin Kumar says he is the private lender who will meet the Bonville, Davis, and Kohut debts. If Colton Kumar and Kevin Kumar is truly a good-faith actor, as he claims, then he can demonstrate that by paying into Court funds to pay those debts. If he does not, that has obvious implications as to whether his intentions as the private lender are, or are not, genuine.
>
> ... Further, a major objective of any r 10.49(1) of the *Alberta Rules of Court* penalty is not just to penalize abuse of the Court's processes, but to deter further abuse. To date Colton Kumar and Kevin Kumar have said what they do is legal. I have extensively documented why that is not correct, and, instead, their UnitedWeStandPeople scheme is just another example of a commonplace international pseudolaw money-for-nothing / debt elimination strategy. Now Colton Kumar and Kevin Kumar have no excuse to believe that what they do is

Form 49
[Rule 13.19]

Clerk's stamp:

COURT FILE NUMBER	1201-12187
COURT OF QUEEN'S BENCH OF ALBERTA	
JUDICIAL CENTRE	CALGARY
PLAINTIFF(S)	**1158997 ALBERTA INC. and 1673793 ALBERTA LTD. and PARTNERS IN SUCCESS MORTGAGE INC. and JOFFREY REYNOLDS**
DEFENDANT(S)	**MAPLE TRUST COMPANY and CASS LINTOTT and CALGARY COURT OF QUEEN'S BENCH and MASTER JUDITH HANEBURY**
DOCUMENT	**ORDER**
ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT	Dentons Canada LLP Bankers Court 15th Floor, 850 - 2nd Street S.W. Calgary, Alberta T2P 0R8 Attention: James B. Rooney, Q.C. Ph. (403) 268-3112 Fx. (403) 268-3100 File No.: 140241-1332/JBR
DATE ON WHICH ORDER WAS PRONOUNCED	June 17, 2013
LOCATION WHERE ORDER WAS PRONOUNCED	Justice Chambers Calgary Courts Centre Calgary, Alberta
NAME OF JUSTICE WHO MADE THIS ORDER	THE HONOURABLE JUSTICE LOVECCHIO

ORDER

UPON the Application of the Defendants, Cass Lintott and Maple Trust Company; AND UPON hearing from counsel for Maple Trust Company and Cass Lintott; AND UPON reviewing the Affidavit evidence and written Briefs submitted by Maple Trust Company and Cass Lintott; AND UPON hearing from the representatives of 1158997 Alberta Inc. ("115"), 1673793 Alberta Ltd. ("167"), Partners in Success Mortgage Inc. ("Partners"), Ty Griffiths, Sarbjit Sarin, and Derek Ryan Johnson personally;

IT IS HEREBY ORDERED AND ADJUDGED:

1. Summary Judgment pursuant to Rule 7.3 (1) of the Alberta Rules of Court is granted in favor of Maple Trust Company and Cass Lintott against 115 and 167 and Partners;

2. The Plaintiffs, 115 and 167 and Partners, are declared vexatious litigants and each is prohibited from commencing or attempting to commence, or from continuing, any appeal, action, application, or proceeding in the Court of Appeal, the Court of Queen's Bench or the Provincial Court of Alberta (Civil), on their own behalf or on behalf of any other entity or Estate without an Order of the appropriate court in which the proceeding is conducted or to be conducted;

3. That Derek Ryan Johnson, the principal and sole director and shareholder of 115 and Partners is declared a vexatious litigant and is prohibited from commencing or attempting to commence, or from continuing, any appeal, action, application or proceeding in the Court of Appeal, the Court of Queen's Bench of Alberta, or the Provincial Court of Alberta (Civil), on his own behalf, or on behalf of any other entity or Estate without an Order of the court in which the proceeding is being conducted or to be conducted;

4. That Ty Griffiths, an individual associated with 115, Partners and 167, is a declared a vexatious litigant and is prohibited from commencing or attempting to commence, or from continuing, any appeal, action, application or proceeding in the Court of Appeal, the Court of Queen's Bench of Alberta, or the Provincial Court of Alberta (Civil), on his own behalf, or on behalf of any other entity or Estate without an Order of the court in which the proceeding is being conducted or to be conducted;

5. That Sarbjit Sarin, an individual associated with and a director of 167, is also declared a vexatious litigant;

6. The Applicants, Maple Trust Company and Cass Lintott, are respectively awarded taxable costs in the appropriate Column as follows:

Maple Trust Company	$5,600.00
Cass Lintott	$4,750.00

7. Rule 9.4 (2) (c) is invoked.

Justice S. J. LoVecchio

IN THE SUPREME COURT OF BRITISH COLUMBIA

Citation: *Kumar v. McDonald,*
2025 BCSC 194

Date: 20250206
Docket: S58772
Registry: Vernon

Between:

Colton Kevin Kumar, 1304139 B.C. Ltd, and Kevin Anthony Kumar
Plaintiffs

And

John McDonald, Heidi Semkowich, and McDonald Paralegal Services Ltd.
Defendants

Before: The Honourable Justice Laurie

(In Chambers)

Reasons for Judgment

The Plaintiffs, appearing in person and as representative for 1304139 B.C. Ltd.	C. Kumar K. Kumar
The Defendants, appearing in person:	J. McDonald H. Semkowich
Representative for McDonald Paralegal services Ltd., appearing in person:	J. McDonald
Place and Date of Hearing:	Vernon, B.C. January 20, 2025
Place and Date of Judgment:	Vernon, B.C. February 6, 2025

Table of Contents

INTRODUCTION

[1] The defendants in this action, John McDonald, Heidi Semkowich, and McDonald Paralegal Services Ltd. apply for an order pursuant to the *Court Jurisdiction and Proceedings Transfer Act*, S.B.C. 2003, c. 28 *[CJPTA]* staying the action against them on the basis that this Court does not have territorial competence over the action against them.

[2] In the alternative, the defendants apply to strike the plaintiffs' claim pursuant to Rule 9-5(1) of the *Supreme Court Civil Rules*, B.C. Reg. 168/2009 *[Rules]* on the basis that it is scandalous, frivolous, vexatious and an abuse of process.

[3] The defendants also seek an order declaring the plaintiffs Colton Kumar and Kevin Kumar to be vexatious litigants, as well as an order prohibiting the plaintiffs from bringing an action against the defendants without first obtaining leave of the Court.

[4] Although the Notice of Application also included an application for dismissal of the action pursuant to the *Protection of Public Participation Act*, S.B.C. 2019, c.3, the defendants abandoned that part of the application in oral submissions.

PLEADINGS AND EVIDENCE

[5] The plaintiffs, Kevin Kumar and Colton Kumar, are father and son respectively, who reside at least partially in British Columbia. The plaintiff 1304139 B.C. Ltd. is the plaintiffs' company incorporated in British Columbia (the "Company").

[6] The defendant John McDonald is a resident of Alberta. He is the sole director and shareholder of the defendant McDonald Paralegal Services, Ltd., a business that operates in Alberta.

[7] The defendant Heidi Semkowich is a resident of Alberta. She is the sole director and shareholder of HMS Paralegal Services, Inc., a business that operates in Alberta.

[8] On November 26, 2024, the plaintiffs filed a Notice of Civil Claim (the "NOCC") alleging that:

- In August 2024, the plaintiffs retained the defendants to provide paralegal services to Timothy Kohut and Terry Kerslake regarding their respective matters before the courts in Alberta;
- Messrs. Kohut and Kerslake were clients of the plaintiffs. Specifically, they were borrowers of specified monetary amounts with active promissory notes with the Company;
- In September 2024, the defendants filed a claim against the plaintiffs on behalf of Messrs. Kohut and Kerslake alleging unjust enrichment, fraudulent misrepresentation, and operating an Organized Pseudolegal Commercial Argument "OPCA" scam;
- The allegations contained in the claim are defamatory;
- Statements published on the defendants' website calling the plaintiffs Kevin and Colton Kumar "well known fraudsters" and "OPCA gurus" are slanderous;
- The defendants interfered with the contractual relationship between the plaintiffs and Messrs. Kohut and Kerslake;
- The defendants' actions constitute a conflict of interest and a breach of the *Legal Profession Act* and Alberta's *Code of Conduct*;
- The defendant's actions caused harm to the plaintiffs' reputation and business, and resulted in financial loss.

[9] On December 19, 2024, the defendants filed a response to the NOCC (the "Response"). In it, the defendants submit that this Court does not have territorial competence over the dispute as the plaintiffs' claim lacks a real and substantial connection to British Columbia. In any event, the defendants submit that Alberta is clearly the more appropriate forum as it is where the defendants reside and conduct their business. It is also where the witnesses are located. Further, there is a real risk of conflicting judgments as the related matters, which are the subject of the plaintiffs' complaints, are before the Alberta Court of Justice.

[10] In addition, the Response submits that the plaintiffs Kevin Kumar and Colton Kumar are subject to access restrictions in the Alberta Court of King's Bench and that by bringing this action in B.C., the plaintiffs are seeking to circumvent those court orders. The defendants assert that the action should be stayed for want of jurisdiction or struck as an abuse of process.

[11] Along with the Response, the defendants also filed a Notice of Application with respect to the present proceedings, advancing the same jurisdictional arguments as those contained in the Response.

[12] The defendants do not dispute that they assisted Messrs. Kohut and Kerslake in filing their respective claims against the plaintiffs in the following actions in the Alberta Court of Justice: Court File P2490103259 (the "Kohut Action") and Court File P2490103260 (the "Kerslake Action"). However, the defendants deny having been retained by the plaintiffs at any time.

[13] In his affidavit, the defendant John McDonald deposed that the Alberta Court of King's Bench has previously described the plaintiffs, Kevin Kumar and Colton Kumar, as being involved in financial scams in the following decisions: *Royal Bank of Canada v. Courtoreille*, 2024 ABKB 302 and *Bonville v. President's Choice Financial*, 2024 ABKB 546 *[Bonville 3].*

[14] Mr. McDonald also deposed that in November 2024, McDonald Paralegal Services Inc. and HMS Paralegal Services Inc. issued a joint press release, which was published on the website of McDonald Paralegal Services Inc., that included a "recap" of *Bonville 3* "in the context of the Kohut Action and the Kerslake Action" (the "Press Release").

[15] Some of the statements alleged by the plaintiffs to be defamatory were contained in the Press Release.

LEGAL FRAMEWORK ON THE JURISDICTIONAL ISSUE

[16] The legal framework for determining whether a court should take jurisdiction over a dispute involves a two-stage analysis as outlined in *PKS v ANR*, 2024 BCSC 2110:

> [17] Thus, as noted in *DL v. MY*, 2019 BCSC 881, at paras 27 to 28, on an application such as the present, the court must ask, first, whether it may take jurisdiction and, second, whether it should take jurisdiction:
>
> > [27] When a court determines whether to take jurisdiction over a dispute, it engages in a two-step analysis. First, the court determines whether it has territorial competence (sometimes called *jurisdiction simpliciter*) over the dispute. The burden of establishing territorial competence rests with the party asserting its existence: *Aleong v. Aleong*, 2013 BCSC 1428 at para. 80.
> >
> > [28] Second, the court determines whether it ought to exercise that jurisdiction, or whether, instead, there is another forum that is "clearly more appropriate": *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 at para. 103 *[Van Breda].* This second step is sometimes referred to as a *forum non conveniens* analysis. The burden in this analysis rests with the party asserting that another forum is clearly more appropriate: *JTG Management Services Ltd. v. Bank of Nanjing Co. Ltd*., 2015 BCCA 200at para. 45.

[17] The usual starting point for determining jurisdiction is the *CJPTA*. Section 3 of the *CJPTA* sets out the circumstances in which a court has territorial competence in a proceeding brought against a person:

> **3.** A court has territorial competence in a proceeding that is brought against a person only if
>
> (a) that person is the plaintiff in another proceeding in the court to which the proceeding in question is a counterclaim,
>
> (b) during the course of the proceeding that person submits to the court's jurisdiction,
>
> (c) there is an agreement between the plaintiff and that person to the effect that the court has jurisdiction in the proceeding,
>
> (d) that person is ordinarily resident in British Columbia at the time of the commencement of the proceeding, or
>
> (e) there is a real and substantial connection between British Columbia and the facts on which the proceeding against that person is based.

[18] With respect to section 3(e), section 10 of the *CJPTA* provides a non-exhaustive list of facts that establish a rebuttable presumption of a "real and substantial connection":

> **10.** Without limiting the right of the plaintiff to prove other circumstances that constitute a real and substantial connection between British Columbia and the facts on which a proceeding is based, a real and substantial connection between British Columbia and those facts is presumed to exist if the proceeding
>
> (a) is brought to enforce, assert, declare or determine proprietary or possessory rights or a security interest in property in British Columbia that is immovable or movable property,
>
> (b) concerns the administration of the estate of a deceased person in relation to
>
> (i) immovable property in British Columbia of the deceased person, or
>
> (ii) movable property anywhere of the deceased person if at the time of death the person was ordinarily resident in British Columbia,
>
> (c) is brought to interpret, rectify, set aside or enforce any deed, will, contract or other instrument in relation to
>
> (i) property in British Columbia that is immovable or movable property, or
>
> (ii) movable property anywhere of a deceased person who at the time of death was ordinarily resident in British Columbia,
>
> (d) is brought against a trustee in relation to the carrying out of a trust in any of the following circumstances:
>
> (i) the trust assets include property in British Columbia that is immovable or movable property and the relief claimed is only as to that property;
>
> (ii) that trustee is ordinarily resident in British Columbia;
>
> (iii) the administration of the trust is principally carried on in British Columbia;
>
> (iv) by the express terms of a trust document, the trust is governed by the law of British Columbia,
>
> (e) concerns contractual obligations, and
>
> (i) the contractual obligations, to a substantial extent, were to be performed in British Columbia,
>
> (ii) by its express terms, the contract is governed by the law of British Columbia, or

(iii) the contract

(A) is for the purchase of property, services or both, for use other than in the course of the purchaser's trade or profession, and

(B) resulted from a solicitation of business in British Columbia by or on behalf of the seller,

(f) concerns restitutionary obligations that, to a substantial extent, arose in British Columbia,

(g) concerns a tort committed in British Columbia,

(h) concerns a business carried on in British Columbia,

(i) is a claim for an injunction ordering a party to do or refrain from doing anything

(i) in British Columbia, or

(ii) in relation to property in British Columbia that is immovable or movable property,

(j) is for a determination of the personal status or capacity of a person who is ordinarily resident in British Columbia,

(k) is for enforcement of a judgment of a court made in or outside British Columbia or an arbitral award made in or outside British Columbia, or

(l) is for the recovery of taxes or other indebtedness and is brought by the government of British Columbia or by a local authority in British Columbia.

[19] Even where the Court has territorial competence over a proceeding under section 3 of the *CJPTA*, it may decline to exercise that jurisdiction on the basis that a court of another jurisdiction is a more appropriate forum after considering the interests of the parties, the ends of justice, and the factors enumerated in section 11(2):

> **11.** (1) After considering the interests of the parties to a proceeding and the ends of justice, a court may decline to exercise its territorial competence in the proceeding on the ground that a court of another state is a more appropriate forum in which to hear the proceeding.
>
> (2) A court, in deciding the question of whether it or a court outside British Columbia is the more appropriate forum in which to hear a proceeding, must consider the circumstances relevant to the proceeding, including

> (a) the comparative convenience and expense for the parties to the proceeding and for their witnesses, in litigating in the court or in any alternative forum,
>
> (b) the law to be applied to issues in the proceeding,
>
> (c) the desirability of avoiding multiplicity of legal proceedings,
>
> (d) the desirability of avoiding conflicting decisions in different courts,
>
> (e) the enforcement of an eventual judgment, and
>
> (f) the fair and efficient working of the Canadian legal system as a whole.

[20] The Court's role on a jurisdictional application is not to determine whether the facts supporting a claim of territorial competence are true. Rather, the plaintiff is only required to show that there is an arguable case that those facts can be established: *Krahn Engineering Ltd. v. Bit*, 2024 BCSC 1069 at para. 23; *Canadian Olympic Committee v. VF Outdoor Canada Co*., 2016 BCSC 238 at para. 24.

DISCUSSION

Territorial Competence

[21] In the case at bar, the issue of territorial competence depends on whether there is a real and substantial connection between British Columbia and the facts on which the action against the defendants is based, pursuant to section 3(e) and section 10 of the *CJPTA*.

[22] The plaintiffs argue that they have established territorial competence because their Company was incorporated, and operates, in British Columbia, and the harm caused by the defendants' conduct occurred in this jurisdiction. They submit that the defamatory content in the Press Release was accessed by the plaintiffs' clients or potential clients in B.C. and that consequently, the plaintiffs suffered financial harm in B.C.

[23] I conclude that the plaintiffs have not established that the Court has territorial competence over the dispute. None of the section 10 *CJPTA* presumptive factors have been established. Further, neither the location of the plaintiffs' business nor the

jurisdiction in which damage was allegedly sustained create a presumption of territorial competence.

[24] The location of the Company or residency of the plaintiffs alone is not a sufficient connecting factor to establish territorial competence: *Club Resorts Ltd. v. Van Breda*, 2012 SCC 17 *[Van Breda]* at para. 86; *MicroCoal Inc. v Livneh*, 2014 BCSC 787 at para. 87; *HSS Helitech Support Services Ltd. v. Verrall Aviation Services Corp*., 2016 BCSC 512 at para. 22.

[25] In *Thumbnail Creative Group Inc. v. Blu Concept Inc*., 2009 BCSC 1833 [*Thumbnail*] at para. 18, the Court rejected a similar submission by the plaintiffs that territorial competence was established because the plaintiffs carried on business in B.C. In *Thumbnail*, the submission was based on the application of section 10(h) of the *CJPTA.* The Court held that the focus of the inquiry must be on whether the plaintiff's business in B.C. was, in fact, the subject matter of the action.

[26] In the case at bar, the subject matter of the plaintiffs' action relates to the defendants' alleged conduct in Alberta, i.e. in filing the Kohut and Kerslake Actions and in publishing the impugned statements in the Press Release. It has little to do with the business carried on by the plaintiffs in B.C. In my view, the connection to B.C. based on this factor is tenuous at best.

[27] Similarly, the connection to B.C. based on the alleged damage sustained in this jurisdiction is also weak and tenuous. The Supreme Court of Canada in *Van Breda* has made it clear that courts should be wary of assuming jurisdiction based on tenuous damages connections:

> [89] The use of damage sustained as a connecting factor may raise difficult issues. For torts like defamation, sustaining damage completes the commission of the tort and often tends to locate the tort in the jurisdiction where the damage is sustained. In other cases, the situation is less clear. *The problem with accepting unreservedly that if damage is sustained at a particular place, the claim presumptively falls within the jurisdiction of the courts of the place, is that this risks sweeping into that jurisdiction claims that have only a limited relationship with the forum. An injury may happen in one place, but the pain and inconvenience resulting from it might be felt in another*

> *country and later in a third one. As a result, presumptive effect cannot be accorded to this connecting factor*.
>
> (Emphasis added)

See also: *Danielson v. Janze*, 2017 BCSC 413 at para. 55.

[28] In my view, the fact that the defendants' statements published on a website were accessed in B.C. does not establish a sufficient connection with this forum.

[29] Based on the pleadings and evidence before me, I conclude that that the plaintiffs have not established that this Court has territorial competence over the action against the defendants.

Discretion to exercise territorial competence (*Forum non conveniens*)

[30] Even if this Court had territorial competence over the dispute, I would decline to exercise that jurisdiction on the basis that Alberta is clearly the more appropriate forum in which to hear the proceeding.

[31] In considering the relevant factors in section 11(2) of the *CJPTA*, given that there are related matters outstanding before the Alberta Court of Justice, i.e. the Kohut and Kerslake Actions, in my view, the desirability of avoiding multiplicity of legal proceedings and conflicting decisions in different courts strongly militate in favour of having this matter heard in Alberta.

[32] Since the facts upon which the action is based took place in Alberta, the witnesses who may be expected to testify are more likely to be located in that jurisdiction, including Mr. Kohut and Mr. Kerslake.

[33] Further, while I do not comment on the merits of the plaintiffs' claim, I note that the NOCC alleges that the defendants breached the *Legal Profession Act,* R.S.A. 2000, c. L-8 and the Law Society of Alberta's *Code of Professional Conduct*, which is an additional factor that points to Alberta as the more appropriate venue.

[34] Overall, after considering the relevant circumstances in section 11(2), the interests of the parties to the proceeding and the ends of justice, I am of the view

that even if this Court had territorial competence over the proceeding against the defendants, it would be appropriate to decline to exercise that territorial competence.

Conclusion on the Jurisdictional Issue

[35] In light of the foregoing reasons, the action must be stayed for want of jurisdiction. Given this conclusion, I do not consider it necessary to decide the defendant's alternative application to strike the NOCC under *Rule* 9-5.

Application for Declaration of Vexatious Litigant

[36] The defendants apply for an order declaring the plaintiffs Kevin Kumar and Colton Kumar to be vexatious litigants. The defendants submit that the individual plaintiffs are subject to court access restrictions in the province of Alberta and have brought this action in British Columbia in an attempt to circumvent those orders. As such, the action constitutes an abuse of process.

[37] The defendants rely on *Unrau v. National Dental Examining Board*, 2019 ABQB 283 in support of their position that where another court has already concluded that a person is an abusive litigant and has taken litigation management steps on that basis, that evidence can be considered by this Court in determining whether to impose similar court access restrictions on that individual.

[38] The defendants directed the Court's attention to the following Alberta court decisions to show that the plaintiffs Kevin Kumar and Colton Kumar are subject to court access restrictions:

- In *1158997 Alberta Inc. v. Maple Trust Company*, 2013 ABQB 483 at para. 106, the Court declared Ty Griffiths as a vexatious litigant pursuant to section 23.1(4) of the *Judicature Act*, R.S.A. 2000, c. J-2. The defendants allege that Ty Griffiths is a fictitious name previously used by Kevin Kumar.

- In *Royal Bank of Canada v. Patrick Courtoreille*, 2024 ABKB 302 at paras. 14-22, the Court described Kevin Kumar's history with the courts in Alberta and his involvement in OPCA activities, among other things. The Court ordered that:

1. Kevin Kumar shall only communicate with the Court of King's Bench of Alberta using the name "Kevin Kumar";

2. He is prohibited from providing legal advice and preparing documents intending to be filed in the Court of King's Bench of Alberta for any person other than himself, and filing or otherwise communicating with the Court of King's Bench of Alberta, except on his own behalf;

3. He is prohibited from acting as an agent, next friend, "*McKenzie* friend", or any other form of representation in proceedings, before the Court of King's Bench of Alberta;

4. He is entirely prohibited from any further participation in certain Alberta Court of King's Bench cases including *Terry Kerslake v. Capital One Bank*, Action No. 230400761 and *Timothy Kohut v. Capital One Services (Canada) Inc.,* Action No. 240308261;

5. The Clerks of the Court of King's Bench of Alberta shall refuse to accept or file any documents or other materials from Kevin Kumar, unless Kevin Kumar is a named party in the action in question.

- In *Bonville v. President's Choice Financial*, 2024 ABKB 483 at para. 90, the Court made similar orders as those stated in 1, 2, 3 and 5 above, in respect of Colton Kumar. In addition, the Court prohibited Colton Kumar from any further participation in certain Alberta Court of King's Bench cases including *Kohut v. Royal Bank of Canada*, Action No. 240305588 and *Royal Bank of Canada v. Kohut*, Action No. 240309627, with some exceptions.

Legal Principles

[39] The Court may prohibit a person from instituting legal proceedings without prior leave of the Court pursuant to section 18 of the *Supreme Court Act*, R.S.B.C. 1996, c. 443 *SCA):*

> **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.

[40] Section 18 confers a broad jurisdiction on the court to control its own processes. This is a power that must not be used lightly. The court must balance the important values underlying open court access against the need to prevent the abuse of that right: *Wu v. Canada (Attorney General)*, 2022 BCSC 2084 *[Wu]* at para. 34, citing *Semenoff Estate v. Semenoff*, 2018 BCCA 17 at para. 31.

[41] In *Rafique v. AWM-Alliance Real Estate Group Ltd*., 2019 BCSC 247 at para. 51, the Court discussed the key indicators of a vexatious proceeding:

> a. bringing one or more actions to determine an issue which has already been determined by a court of competent jurisdiction;
>
> b. it is obvious that the action cannot succeed, would lead to no possible good, or no reasonable person can reasonably expect to obtain relief;
>
> c. the action is 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. the grounds and issues in the first proceeding have been 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. the person who instituted the proceedings has failed to pay the costs of the unsuccessful proceedings; and
>
> f. the person has persistently taken unsuccessful appeals.

See also: *Wu* at para. 36; *Carten v. Carten*, 2015 BCCA 201 at para. 32 citing *Lindsay v. Canada (Attorney-General),* 2005 BCCA 594.

Discussion

[42] After considering the Application Record, the submissions of the parties, and the applicable legal principles and case authority, I am not satisfied that an order pursuant to Section 18 of the *SCA* is warranted at this time. I say this mainly for the following reasons:

- The focus of the parties' submissions before me was on the issue of jurisdiction and there was not sufficient court time at the hearing date to fully canvass this secondary issue;

- While I do not ignore the plaintiffs' history in the Alberta courts, in my view, the nature of the allegations in this action, which is primarily grounded on defamation and conflict of interest, is different from the Alberta matters that I had been referred to, in which the plaintiffs had been involved. I appreciate that it is not entirely unrelated, however I am unable to conclude that the main issues in this action had been previously determined by the courts;

- Although it appears that the plaintiffs purposely avoided bringing this action in Alberta, I am unable to conclude that their conduct in instituting the proceedings in B.C. breached an order made by the Court of King's Bench of Alberta. The court orders that I had been referred to do not prohibit or restrict the individual plaintiffs from filing an action on their own behalf in their own names.

[43] In balancing the importance of open court access against the need to prevent the abuse of that right, based on the evidence before me, I find that the balance does not favour granting an order under section 18 of the *SCA* at this time.

Conclusion on Declaration of Vexatious Litigant

[44] In light of the foregoing reasons, I dismiss the defendants' application for an order under section 18 of the *SCA*.

Increased / Special Costs

[45] The defendants submit that increased costs and special costs are warranted in these circumstances because the plaintiffs who are subject to court access restrictions in Alberta have intentionally brought the action outside of that jurisdiction to frustrate the objectives of those access restrictions. Further, they submit that the plaintiffs have engaged in litigation misconduct deserving of sanction.

[46] As I had mentioned above, the court access restrictions that I had been referred to do not prohibit the individual plaintiffs from filing an action in which they are a named party. Therefore, in my view, it is not clear on the evidence that the plaintiffs' motivation for bringing the action in B.C. was to frustrate the objectives of the access restrictions imposed on them. With respect to the allegation of litigation misconduct, while I don't disagree that there has been reprehensible conduct, I am

not satisfied based on the evidence that it is sufficiently connected to the conduct of this litigation particularly in light of the brief procedural history of this matter.

[47] In the circumstances, I decline to order the requested increased costs and special costs.

DISPOSITION

[48] The action against the defendants is stayed for want of jurisdiction. The application for an order declaring the individual plaintiffs to be vexatious litigants and for court access restrictions is dismissed. The defendants are entitled to costs for this application at Scale B.

"Laurie J."

Court of Queen's Bench of Alberta

Citation: Unrau v National Dental Examining Board, 2019 ABQB 283

Date: 20190425
Docket: 1801 12350
Registry: Calgary

Between:

Bernie Unrau

Plaintiff

- and -

National Dental Examining Board - Jack Gerrow, Canadian Dental Association, Ethics Board, Attn: Alberta Dental Association, re: death threat by Brian Ruddy etc., AB Health c/o Foothills Hosp., Rockyview Hosp. Ethics and Complaints Officer, CND Human Rights Commission, Office of Ethics Commissioner of Canada, NSDT c/o Gov't of Canada, NAIT, City of Calgary - Legal and Corporate Security et al, US Dep't of Justice/FBI re Amblin, Amazon et al, copyright infringements, lawyers misbehaviour, political prejudice judge, theft of IP

Defendants

Reasons for Decision
of the
Associate Chief Justice J.D. Rooke

Summary:

Unrau filed a Statement of Claim that made bald allegations which did not reference any of the eleven named Defendants specifically, but, nevertheless, sought $5 million and impossible remedies. The Court, on its own motion, initiated a Rule 3.68 "show cause" procedure that required Unrau to identify a valid basis for his action. Unrau made no reply. His lawsuit was struck out as an abusive and vexatious proceeding.

The remaining issue is whether Unrau should immediately be subject to ongoing court access restrictions by a vexatious litigant order. This requires that the Court evaluate Unrau's litigation conduct, and determine whether ***Lymer v Jonsson****, 2016 ABCA 32 is a*

binding authority that requires an additional court process prior to imposing indefinite court access restrictions.

***Held**: Unrau is, and should be, immediately subject to court access restrictions by a vexatious litigant order, that declares him to be a vexatious litigant.*

Abusive litigation and litigants require a new approach that is prospective rather than punitive, and which applies the Court's inherent jurisdiction to achieve the post-"culture shift" objective of fair and proportionate steps that manage abusive litigation, preserve limited and stressed court resources, but maintain access to the Courts. These Reasons illustrate the improved current understanding of the increasingly common vexatious litigation phenomenon. Vexatious litigants are a diverse group. Many are affected by mental health issues which lead to litigation misconduct. Others abuse courts for ideological reasons or personal benefit. The broad range of bad conduct encountered is surveyed. Abusive litigation must be countered at the earliest opportunity for the benefit of all involved, including the abusive litigants themselves.

Court access restrictions are divided into two types: intra-dispute Grepe v Loam Orders, and vexatious litigant orders which potentially impose gatekeeping steps on more than one dispute, including hypothetical litigation. Commonwealth authorities disagree on the basis on which courts may impose the latter type. The "Traditional Authority" holds vexatious litigant orders are only authorized by statute, while the "Modern Approach" concludes both legislation and inherent court jurisdiction provide independent but complementary bases to impose court access restrictions. This Court has adopted the Modern Approach. Early intervention is triggered when future abusive litigation is anticipated. The Modern Approach provides a broad and open-ended suite of court access restrictions which permit measured, fair, and proportionate responses to the diverse and sometimes extreme misconduct, and physical threats, now increasingly encountered by trial courts.

Court intervention is possible either on application, or on the Court's own motion, when an abusive litigant exhibits one or more characteristics, or "indicia", of abusive litigation. A very broad range of evidence is potentially relevant, since this is a deep inquiry into the litigant, his or her personal characteristics and activities, and as to whether abusive litigation indicia are present. A renewed indicia scheme is proposed. The critical question is whether future abusive litigation is anticipated. If so, and if that anticipated abuse meets the "threshold criterion" of extending outside a single dispute, then a vexatious litigant order is usually appropriate. A requirement for the vexatious litigant to seek permission to initiate or continue litigation - leave - is usually a fair and proportionate response to anticipated abusive litigation misconduct. A leave requirement is a minimal impediment to court access. Further and more strict gatekeeping steps may also be imposed, where warranted, such as if anticipated misconduct is more likely, disruptive, and/or harmful.

Court Orders which impose court access restrictions must be explicit and enforceable. Court Clerks enforce vexatious litigant orders, so orders must be written to be clearly understood and followed by all, especially the Court Clerks. This Court has developed a

set of ancillary restrictions that should always be imposed: 1) to stop future abusive litigation, 2) to minimize "busybody" and "proxy" litigation, 3) to prohibit unauthorized practice of law, 4) to control abuse of fee waivers, and 5) to be conducive to the revision of vexatious litigant court orders by affected Courts, as necessary.

In the post-"culture shift" context, and per the Modern Approach, no further steps are necessary before imposing indefinite court access restrictions on Unrau. ***Lymer v Jonsson****, 2016 ABCA 32 is not a binding authority where a litigant had the opportunity to explain why he or she is a fair dealer, and how their conduct was in good faith. Unrau had that chance. While Unrau's Statement of Claim, on its own, was vexatious, that did not warrant ongoing court access restrictions. However, the broader litigation record shows Unrau is obsessed with a desire to be an unregistered, unregulated dentist. With that broader context, future litigation misconduct by Unrau is plausible, and so a vexatious litigant order is imposed. That makes Unrau a vexatious litigant.*

Table of Contents

Derek Ryan Johnson, are globally prohibited from any litigation activity, except with leave, in all Alberta courts, on behalf of themselves or any other entity or estate.

[210] In the end, attempts to control this scam and its participants accounted for two thirds of all global court access restriction orders issued by the judicial officers of this Court in Calgary between 2000-2014. I cannot meaningfully assess the amount of time and judicial, staff, and victim resources wasted by these individuals.

[211] What is noteworthy, and, frankly, rather depressing, is viewed objectively, this scenario shows the limits of the current approach to court access restrictions. Though many court orders were issued to rein in these scammers, and cost sanctions were imposed to deter further misconduct, the scammers simply reappeared and counterattacked. New corporate guises and possibly false personas were introduced to draw out the process. In ***1158997*** Justice Lovecchio explains the kingpin of the scammer ring, Derek Ryan Johnson, was also frustrating parallel efforts by the Real Estate Counsel of Alberta to control his activities: para 74. Johnson had been fined for operating as an unlicensed real estate agent. These scammers only stopped when Johnson and an accomplice, Kevin Kumar, were found in contempt of court by Martin J and each sentenced to two months in jail: ***Real Estate Counsel of Alberta v Johnson***, Calgary 1401-11567, 1401-12622, 1501-02988 (Alta QB). Johnson and Kumar had also between them accumulated $125,000.00 in fines, which presumably remain unpaid.

[212] What the Johnson Dollar Dealer fraud ring illustrates is that even comprehensive court access restrictions can sometimes be circumvented or defeated by motivated and creative abusive court actors. Anyone can register a corporation and thereby obtain a new identity under which to engage in litigation misconduct. The same problem exists for false identities, as illustrated by "Ty Griffiths". Where a court participant is simply abusing court processes for greed or profit - and succeeding - there is no reason why that individual would do otherwise in the future, provided the benefits obtained continue to outweigh costs. The traditional leave requirement court access restriction is fair and proportionate because that prerequisite has only a minimal associated cost. Where the abusive litigant's motive is profit, this kind of hurdle may prove ineffectual, or even counterproductive. The protection it promises is a mirage.

b. Spurious *Habeas Corpus* Applications

[213] The second Alberta example of abusive litigation for profit and advantage started around the time when Johnson's Dollar Dealers disappeared. In 2014, the Supreme Court of Canada in ***Mission Institution v Khela***, 2014 SCC 24, [2014] 1 SCR 502 [***Khela***] expanded the scope of *habeas corpus* to include court review of Correctional Service Canada decisions that result in prisoners experiencing a deprivation of residual liberty. Following ***Khela***, this Court received an unprecedented number of *habeas corpus* applications from SRL Correctional Service Canada inmates.

[214] While the manner in which this Court tracks proceedings in its docket record does not permit exact statistics on this phenomenon, I believe it is safe to say that the Court went from receiving perhaps one or two *habeas corpus* applications annually, to thirty to forty applications, at a minimum, per year. These applications sometimes appeared singly, but other times large bundles of 'carbon copy' applications were received. Given the limited means of most Correctional Service Canada inmates, and the rule that court filing fees may not be imposed where that causes an undue hardship (***Trial Lawyers***, at paras 45-46), that meant for prisoners "... a habeas corpus application costs nothing more than the postage required to deliver that

paperwork to the Court ...": ***Getschel v Canada (Attorney General)***, 2018 ABQB 409 at para 86, 70 Alta LR (6th) 111 [***Getschel***]. Costs awards to sanction bad litigation obviously had little effect for the same reason.

[215] The overwhelming majority of these *habeas corpus* applications were unsuccessful (four successful applications, post-***Khela***: ***Hamm v Attorney General of Canada (Edmonton Institution)***, 2019 ABQB 247 at paras 243-244 [***Hamm***]. However, not only were many of these applications weak, most had no merit whatsoever.

[216] Some complained about events that had happened many years in the past: e.g. ***Cundell v Bowden Institution***, 2016 ABQB 348 at paras 37-50. Instead of release, some inmates sought declarations: e.g. ***Larente v Bonnefogel***, 2018 ABQB 140 at paras 12-13. Many applications demanded court supervision of institutional programs and living conditions, complained that guards were rude, and that food was bad - for example that prison menus did not suit the inmate, there were too many pasta dishes, and the "goo-lash" was hard to "decipher": ***Ewanchuk***, at paras 47-51.

[217] Another common demand was money. Some so-called *habeas corpus* applications were actually statements of claim in disguise: e.g. ***Ewanchuk***, at para 68. Many inmates believed *habeas corpus* was a way to directly or indirectly get quick cash, with no real expense: ***Getschel***, at paras 62-89; ***Hamm***, at para 242.

[218] The complaints on which some of these *habeas corpus* applications demanded (often impossible) relief bordering on the absurd, such as:

1. smelling bacon, but not being able to eat it (***Ewanchuk***, at para 58);
2. when an inmate emerged from his cell with an erection sticking out of his open jeans fly, and a female guard stared at that, that staring was sexual harassment of the inmate (***Getschel***, at paras 23-31); and
3. a transfer from minimum to medium security was procedurally unfair because the inmate was *not* handcuffed (***Loughlin v Her Majesty the Queen***, 2017 ABQB 677 at para 19).

[219] It ultimately came to light that the surge of boilerplate, often incoherent, *habeas corpus* applications received by the Court were, at least in part, because Alberta institutions housed at least four competing "*habeas corpus* entrepreneurs" inmates (***Lee v Canada #1***, at paras 205-239, ***Lee v Canada #2***, at paras 49-74; ***McCargar v Canada***, 2017 ABQB 729 at paras 51-55, 68 Alta LR (6th) 305 [***McCargar #2***]), who were paid to prepare these materials, and often interacted directly with the Court Clerks as a kind of litigation representative (e.g. ***McCargar v Canada***, 2017 ABQB 416 at para 8, 63 Alta LR (6th) 88 [***McCargar #1***]). This phenomenon is not apparently limited to Alberta, see: ***Jones v Mountain Institution (Warden)***, 2017 BCSC 1304; ***Law Society of British Columbia v Parchment***, 2018 BCSC 2257. While one cannot know what exactly was promised to the customers of these *habeas corpus* entrepreneurs, the evidence available makes it clear that at least some of these applications were based on the promise of quick fast cash. The effective absence of any negative consequences to the *habeas corpus* applicants no doubt was also a major reason why this form of litigation abuse surged so dramatically, post-2014: ***Hamm***, at paras 249-256.

[220] Another serious problem with this particular type of abusive litigation was *spurious habeas corpus applications are unusually disruptive for the Court*. By law, these applications

must take priority over all other Alberta Court of Queen's Bench proceedings (***Storgoff (Re)***, [1945] SCR 526 at 590-591, [1945] 3 DLR 673; ***Khela***, at para 3; ***DG v Bowden Institution***, 2016 ABCA 52 at paras 41, 124, 612 AR 231), pushing legitimate litigation 'back down the queue' (***Ewanchuk***, at paras 170-187).

[221] Another issue was these applications, in certain instances, expanded dramatically after being filed, growing multiple new collateral issues and demands. For example, the ***MacKinnon v Bowden Institution***, 2018 ABQB 144, 71 Alta LR (6th) 267 [***MacKinnon #2***] *habeas corpus* application was made on completely false auspices. This inmate's true intention was to use *habeas corpus* as the thin edge of the wedge to open up his decades old murder conviction: para 29. He demanded documents be provided, evidence from the original trial, and government-paid lawyers. Stephen Harper (allegedly) led a conspiracy to keep this inmate behind bars: at para 29. This was only the latest in much litigation abuse with the same objective: paras 36-39.

[222] While the number of unmeritorious and abusive *habeas corpus* applications filed by SRL inmates declined in 2018 after the Court instituted a document-based "show cause" procedure (***Latham #1***), there are continuing challenges to avoid court proceedings and hearings in response to apparently hopeless *habeas corpus* applications. For example, all three of the examples of frivolous complaints identified above at para [218] *led to full court hearings*, commandeering and wasting critically stressed court resources. Unfortunately, now lawyers are also filing *habeas corpus* applications which have no possible merit (e.g. ***RP v Alberta (Director of Child, Youth and Family Enhancement)***, 2018 ABQB 391, action struck out 2018 ABQB 508, 12 RFL (8th) 345; ***Wilcox v Alberta***, 2019 ABQB 60, action struck out ***Wilcox v Alberta***, 2019 ABQB 201 [***Wilcox #3***]), or are seeking to transform *habeas corpus* into a quick cash remedy (***Hamm***).

c. Strange Abusive Litigant Phenomena

[223] Sometimes the selfish or goal-oriented motivation of an abusive litigant is unexpected, or not initially obvious. An example of that was a matter I heard, reported as ***Stout***. Here, the submissive half in a sadomasochist relationship sued his former partner after their tumultuous relationship collapsed due to his infidelities with prostitutes. The Plaintiff alleged malicious prosecution, despite him being convicted on multiple counts: ***R v Stout***, 2013 ABPC 108 [***R v Stout***]. I dismissed Stout's malicious prosecution lawsuit on multiple grounds, including that it was an abuse of process, and conducted for an improper purpose.

[224] One possible explanation for that improper purpose was the Plaintiff had a "post-break up protocol", where he would obsessively pursue his now ex-partner, and in that way restore their unusual relationship: ***Stout***, at paras 31, 80. In other words, here it was plausible the Plaintiff was suing his current ex-partner to express his affection and obsession with her, and, in that way, they would get together again, just the latest instance of a pattern that had apparently repeated as many as 25 times in the previous five years (***R v Stout***, at paras 12-13, 25) (though this was the first time the "protocol" led to court proceedings). The lesson, in brief, is sometimes what appears to be inexplicable litigation conduct may have a not so obvious reason.

[225] The uncomfortable truth is that when the Court faces truly determined abusive litigants who have found a way to exploit court processes for money or other benefits, the current mechanisms Canadian courts possess to manage abusive litigation will be challenged, or, at best, provide bandages for already inflicted wounds. Abusive litigants can don new corporate masks, or employ proxy actors. Some court processes, like *habeas corpus*, must remain 'largely

unlocked' because of their constitutional function, so that an abusive litigant will face, at most, reduced potential scrutiny: ***Hamm***, at paras 195-214. Realistically, Canadian courts may have to rely on more creative judicial decisions, or on other government actors, law enforcement, and Parliament and the legislatures to create meaningful mechanisms that discourage this category of abusive litigation.

[226] After all, ultimately, this form of abusive litigation is a question of profit and loss. When the latter outweighs the former, these abusive litigants will stop. Until then, they have no reason to change their ways, and they don't. We have to be more vigilant and effective.

4. Litigation Terrorists

[227] The last abusive litigant category are persons who use court processes to inflict harm on targets, intimidate, and empower themselves to dominate others. While the "litigation terrorist" label has been used in a number of contexts, including by myself, I now adopt the definition set by Shelley J in ***Lee v Canada #2***, at para 155:

> I define a "litigation terrorist" as a person who engages in meritless litigation where the principal intended purpose is to intimidate and/or cause harm to the other party or parties. ... These litigants 'weaponize' the courts and the law.

[228] Shelley J continues to observe that some abusive litigants, such as OPCA litigants, have a "litigation terrorist" aspect, in that they like the idea of inflicting harm or "disciplining" their ideological enemies: para 156.

[229] Fortunately, pure litigation terrorists appear to be quite uncommon. Most abusive litigants have at least some kind of identifiable personal goal, and do not simply litigate purely for the simple enjoyment of harming others.

Lee

[230] There are, however, exceptions. Bowden Institution inmate John Mark Lee Jr. is an archetype of the true litigation terrorist. His court misconduct is reviewed in ***Lee v Canada #1*** and ***Lee v Canada #2***. This prolific litigant's lawsuits and court applications appear to have no foundation other than his desire to harm and dominate others. Shelley J concluded that Correctional Service Canada's evaluations of Lee were correct; he "gets off" by dominating and harming others via the courts: ***Lee v Canada #2***, at para 157.

[231] ***Lee v Blondin***, 2017 ABQB 800, 22 CPC (8th) 291 is a disturbing illustration of Lee's malice. Lee is incarcerated for murder. In 1989 Lee stabbed a young boy to death. The child was attempting to escape sexual assault by Lee after Lee had produced a fake police badge. Lee, in 2017, sued the family of his victim, claiming Lee had suffered mental distress when the family of his victim attended Parole Board of Canada proceedings and made victim impact statements that included unfavorable things about Lee. Lee claimed that these statements "... were intended to expressly harm him ... the tort of misfeasance.": para 7. On this basis Lee sued for $200,000.00, or that the family cease attending his parole hearings and remove a memorial website to their dead child. Shelley J, on her own motion, struck out this action per *Rule* 3.68, as "... contrary to the interests of justice, a further abuse of process, and contrary to public policy ...".

[232] Lee subsequently claimed that since his lawsuit in Alberta was frustrated in this manner, he now has his relatives conducting litigation with the same objective in Ontario: ***Lee v Canada #2***, at para 85.

[233] Lee's other litigation targets practically anyone who offends him. Some of his litigation is ridiculous, such as a lawsuit against Canada that demanded $100,000.00 since he was not permitted to sunbath nude, which aggravated "... the Acne problem on his bare backside (rump) ..." (***Lee v Canada #2***, at para 101), or his lawsuit that demanded a bank use him as "their corporate cover boy" for the purposes of advertising and credit card promotions (***Lee v Canada #2***, at para 106).

[234] However, most of Lee's abusive litigation targets Correctional Service Canada workers who have in some way offended him. For example, after he was suspended from working at the Bowden Institution kitchen, Lee filed four lawsuits against the Warden and others, demanding between $500,000.00 and $800,000.00 each: ***Lee v Canada #2***, at paras 116-117. ***Lee v Hache***, 2018 ABQB 88 [***Lee v Hache #1***] reports Master Smart striking out a lawsuit by Lee against an institutional nurse from whom he demanded $20,000.00. The nurse had refused to personally deliver Lee's medication to his cell, but instead required Lee attend a nursing station to pick up his medication. Lee's ***Lee v Hache #1*** statement of claim says this caused Lee stress, which led to him having more sex with fellow inmates, who Lee calls "peer counsellors". That stress and sexual activity (allegedly) warranted the damage award. This action was struck out by the Court as abusive.

[235] Being made subject to court access restrictions did not stop Lee. He applied for leave to continue ten civil lawsuits and appeals (including an appeal of ***Lee v Hache #1***), but provided no substantive basis for why any of his litigation was valid. All the actions were therefore struck out: ***Lee v Hache***, 2018 ABQB 384 [***Lee v Hache #2***]. After that, Lee simply shifted his litigation activities to the Federal Court: ***Lee v Canada #2***, at paras 175-176. The Attorney General of Canada has now applied to have Lee subject to court access restrictions in that jurisdiction, too: ***Attorney General of Canada v Lee***, Edmonton T-2084-18 (FC).

[236] But that is still not the full extent of Lee's abusive terrorist litigation activity. He was one of the prison inmate *habeas corpus* entrepreneurs. Lee not merely acknowledged that, but proudly detailed how he had prepared materials for at least 20 actions conducted by other inmates, including 16 *habeas corpus* applications: ***Lee v Canada #2***, at paras 49-74. Lee openly admitted that as far as he was concerned, he did not care if those lawsuits and applications had no merit. What mattered to him was that this litigation harmed and intimidated Correctional Service Canada and its employees. That harassment and injury was his litigation terrorism objective, a method to discipline those Lee identified as enemies and wrongdoers.

[237] Fortunately, it seems these true litigation terrorists are uncommon. Recent Alberta jurisprudence provides few other examples.

- ***IntelliView Technologies Inc v Badawy***, 2018 ABQB 961 at paras 151-152, leave refused 2019 ABCA 66 [***IntelliView v Badawy #1***] - a divorced spouse obtained corporate and intellectual property registrations for the name of his ex-wife's law firm and lawyer, then sued for breach of those. Campbell J concluded there was no legitimate explanation for that, the ex-husband "... [used] legal processes with the intention to harass, harm, and intimidate. ...".
- ***Lymer (Re) #3***, at paras 102-113 - the Court concluded that the abusive litigant is either or both a litigation terrorist who "gets off" on harming others via the courts, or used his court activities to conceal millions of dollars in investor funds that the abusive litigant had obtained under false auspices.

[238] The critical point is that abuse by litigation terrorists should not be tolerated. When one of these malignant personalities is identified, public confidence in the judicial system will be severely taxed unless their "weaponized litigation" is brought under *immediate* and *effective* control.

5. Sometimes Things Are Complicated

[239] The four general types of abusive litigant I have identified previously (mental health abusive litigants, ideological abusive litigants, abusive litigants for profit and advantage, litigation terrorists) are not mutually exclusive. Sometimes an abusive litigant straddles a number of these categories.

McKechnie

[240] A recent and extreme example is Amos Edwin McKechnie, who was first made the subject of interim court access restrictions (***McKechnie #1***), then comprehensive and very strict ongoing restrictions (***McKechnie #2***). In the first decision, McKechnie was given the opportunity to make submissions as to whether he should be subject to ongoing court access restrictions. McKechnie did not provide a written response, but instead left a phone message that he would kill the judge for interfering with McKechnie's court and litigation activities: ***McKechnie #2***, at para 7. He later repeated that threat in court and on the record.

[241] As indicated, McKechnie combined a number of abusive litigant types. He appears to be a litigation terrorist. He filed with the Court various family law applications where he claimed parentage to a child, describing sex acts with the mother in pornographic detail, and that McKechnie had a contractual right to kill the child's mother: ***McKechnie #1***, at paras 14-16. Simpson J concluded this was an attempt to stalk, harass, and intimidate the mother of McKechnie's purported child.

[242] McKechnie's numerous declarations in documents and in court that he would kill, or order killed, persons who interfere with his court activities also extended to additional judges, lawyers, including his former criminal defence counsel and her law firm, court staff, the Law Society of Alberta, employees of Alberta Correction Services, and police: ***McKechnie #2***, at paras 2, 13, 34. McKechnie was explicit in court and in his materials: those killings would be legal and are justified. As one might anticipate, McKechnie was an OPCA litigant, and a self-declared Freeman-on-the-Land: ***McKechnie #1***, at paras 22-25; ***McKechnie #2***, at paras 33-34. McKechnie's interpretation of the *Criminal Code* (purportedly) permits him to execute those he identifies as wrongdoers, and who do not follow *his* law. McKechnie's abusive litigation therefore also had an ideological component, targeting the usual objects of the pseudolaw community's hatred and paranoid, conspiratorial belief.

[243] If that were not enough, McKechnie also had serious psychiatric issues, meeting the criteria for delusional disorder, primarily persecutory and grandiose delusions, or very severe personality disorder with paranoid, antisocial, and narcissistic traits: ***McKechnie #2***, at para 15. Moreover, the risk associated with McKechnie's threats, beliefs and mental illness were real. Professional threat assessment classified McKechnie as a high risk of violence to those in the justice system: ***McKechnie #2***, at para 16.

[244] Managing persons like McKechnie is a challenge. He is facing a range of serious criminal charges, and so he must be permitted his right to make a full answer and defence. Despite his very troubling conduct, McKechnie still also has a *prima facie* right to engage the courts in civil